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A SURVEY OF CONSTITUTIONAL DEVELOPMENT IN CHINA

STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

EDITED BY THE FACULTY OF POLITICAL SCIENCE OF
COLUMBIA UNIVERSITY

Volume XL]

[Number 1

Whole Number 104

**A SURVEY OF CONSTITUTIONAL
DEVELOPMENT IN CHINA**

BY

HAWKLING L. YEN, Ph.D.



New York

COLUMBIA UNIVERSITY

LONGMANS, GREEN & CO., AGENTS

LONDON: P. S. KING & SON

1911

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THE FACULTY OF POLITICAL SCIENCE OF
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PREFACE

IN this monograph the author does not attempt to write a sketch of Chinese history, but only endeavors to present in an orderly way, mainly for the occidental reader, the important constitutional changes that have occurred in the gradual development of the Chinese state. To him the development of the Chinese state, as any other state, may be likened to a mountain-range, which at places rises to be high mountains and at others dwindles to become low valleys. The mountains are not of the same height, nor are the valleys of the same distance. It is the high mountains that have received his attention and treatment here. The period of over 2,000 years extending from the close of the third century B. C. to the end of the nineteenth represents a long stretch of low plain, a due recognition and consideration of which will readily explain the so-called "arrested development" of the Chinese civilization and the fond attachment of the Chinese people to the ancient régime. Toward the close of the past century the range once more began to rise and is now rapidly rising. On account of the recency of the change the author has refrained from entering upon a critical study of the events but contents himself with an orderly statement of the important facts.

In this period when the western civilization—the result of a vast amount of labor and sacrifice—is being introduced to China, it is but fair that she on her part should give something of her own in return. The author believes that she has much to give, especially in the domain of political science. That the Chinese people possess a highly political genius may be seen from the governmental systems they have constructed, and the associations and clubs they have

organized while residing abroad. It is a misfortune that China happened to throw her doors open to the western world at a time when her governmental machine, after having run for over 2,000 years, was already worn out; and, as a result of her foreign wars, her true merits have been greatly underrated.

The facts embodied in this monograph are familiar to any Chinese scholar or any foreigner who is fairly acquainted with Chinese history, but the system in which they are marshaled here is a new attempt. A vast amount of Chinese literature recording the political experiences of 4,000 years is open to any ambitious explorer, and the results of his exploration, if intelligently and systematically reported, will constitute a considerable and valuable contribution to the world's stock of knowledge. The author will be greatly satisfied if this monograph should on the one hand arouse in the foreign reader some interest in the political institutions of China, and on the other give an impetus to the Chinese reader to push the study to details.

The author avails himself of this opportunity to express his sense of gratitude to his friends and acquaintances at home or abroad for their readiness in giving information and furnishing materials for this treatise, and to Professor Friedrich Hirth, of Columbia University, for his kindness in allowing the use of his valuable private library. But it is to Professor Charles A. Beard that he feels the deepest obligation. From the beginning to the end Professor Beard took active interest in the treatise and was never sparing in giving encouragement. It was not until after numerous long conferences in which he gave directions and suggestions, arranged the parts, and corrected the errors, that this monograph was brought to the shape in which it stands.

H. L. Y.

COLUMBIA UNIVERSITY, NEW YORK CITY, MARCH 18, 1911.

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CHAPTER I

POLITICAL PHILOSOPHY

I. IS THERE A CONSTITUTION IN CHINA?

CHINA has no constitution, if by a constitution one means a written instrument ordained and established by the people as that of the United States of America, or one granted nominally by a king as that of Prussia; but if by a constitution one means a body of customs, traditions, precedents, as that of England, China has one. As the Christians cherish the Scriptures; the English, Magna Carta; and the Americans, the Constitution; so the Chinese cherish the Confucian Classics. As may be reasonably expected of the works of ancient days, the Confucian Classics are a mixture of politics and ethics with a great preponderance of the former over the latter. Hence besides satisfying or tending to satisfy the religious cravings of the people, they have been very powerful in shaping their political ideas. On the one hand they have curbed the multitude in their radical tendencies and on the other acted as bulwarks for the people against unwarranted governmental encroachments.

The deeds and words of illustrious rulers, the teachings and doctrines of the sages and philosophers recorded in the Classics forming mandatory directions on the one hand, and the precedents created in the long disuse of the former imperial prerogatives of an oppressive nature acting as limitations on the other, constitute what may be called in China the law of the land. The positive directions and negative limitations the emperor cannot break, violate, or disregard, not because he is legally

bound to observe them but because he is powerless before the unyielding rigidity of the political habits of the people and the stern authority of their venerable customs. A law can abolish a custom only when a large portion of the people is convinced of its evil or when it does not touch their fundamental interests.

As regards the Classics, in spite of the defectiveness, hiatuses, various and even divergent commentaries and expositions of the texts, and the alterations of the texts themselves as suspected or alleged to have been made by sycophantic courtier-scholars to ingratiate themselves with the emperor, a careful student can always discern the main lines of thought contained therein. Indeed, with the progress of time, the change of the political, social, and economical conditions of the country, and especially the advent of the western civilization, their hold on the minds of the people has been shaken, their venerableness derided, and they have been again and again charged with responsibility for the present degeneration and decay of China. However, the best scholarship of the country inclines to believe that the Classics will survive this rude treatment, and in time, after having discarded their dilapidated garment will come out triumphant in the winning garb of "new learning." At any rate, in order to study the constitutional development in China as we propose to do here, an examination into the political philosophy of the Confucian school as expressed in the Classics and the writings of the disciples is indispensable.

II. FOUR LEADING SCHOOLS OF POLITICAL PHILOSOPHY]

First of all it should be remarked that Confucianism is not the only school of political philosophy in China. Of a nearly equal power and influence, and springing into

existence almost at the same time with the Confucian school are the schools of Lau-tse,¹ Yang Chu and Mo Ti. For our purpose a general description of each of them will be sufficient.

A. 1. Lau-tse. He was born, as it has been handed down, in the year 604 B. C., in the east of what is now the Province of Honan. For some time he held the office of the Keeper of the Archives, but it seems that worldly honor did not appeal to him. After much study and contemplation he announced to the world that he had discovered the clue to all things divine and human, which he called Reason and Virtue. Attributed to him, or at least containing his sayings, is a very modest volume called *The Book on Reason and Virtue*, mainly inculcating the Doctrine of Inaction—"Do nothing and things will be done;" "Keep behind and you will be in front; keep out and you will be in;" "If the government is tolerant, the people will be without guile; if the government is meddling, there will be constant violation of law." The numerous didactic and sententious maxims, of which these are mere illustrations, all point to the teaching of inaction, for which Lau-tse has been regarded as the founder of the latitudinarian and *laissez-faire* principle in China.

2. Chong-tse. Two centuries later, Chong-tse, a man of towering intellect, was born in the modern Province of Anhui. Being somewhat similar to Lau-tse in nature

¹ The translation of a Chinese name into English is various with various translators, but generally latin vowel sounds are used, *e. g.* *Li Hung-chang*, which, to be rendered in English vowel sounds, should be *Lee Hoong-chang*. For our purpose the old forms will be adopted on account of their familiarity to the reader, though it is hoped that, because of the more general use of the English language, a new system of spelling in translation will be devised.

and feeling much admiration for his philosophy, he was irresistibly drawn into that school. Many of his essays, allegorical in nature, have been preserved entire under the name of *Chong-tse* to the present day, and read and re-read by the Chinese students and scholars, not so much on account of their philosophy as on account of their style. He, by his essays, not only continued and furthered the existence of the school, but also greatly added to its dignity, importance and influence. In his essay on "Theft"¹ he said:

As long as great rulers do not die, so long will there be robbers. . . . The most tranquil time is that when the people are contented and happy, and when although the crow of the cock and the bark of the dog in one village are within the hearing of another, the people of the two villages are born, grow old and die without any intercommunication.

B. 1. Confucius.² This sage and philosopher was born in what is now the Province of Shantung in the year 551 and died in the year 479 B. C. Over against the Doctrine of Reason and Virtue to be secured by Inaction and Silence as expounded by Lau-tse, Confucius vigorously preached Morals and Rights to be attained and preserved by Cultivation and Effort.

2. Mencius.³ Mencius' birthplace was also in the Province of Shantung, and his life covered eighty-three years extending from 372 to 289 B. C. He received his education from Tse-sze, the grandson of Confucius, and spent most of his time in teaching, preaching, travelling from one kingdom to another, and holding audiences

¹ One of the collection of his essays under the name of *Chong-tse*.

² *Confucius* is the latinized form of *Kung-tse*. His public life and literary works will be treated later.

³ *Mencius* is the latinized form of *Meng-tse*.

with different rulers. The book under the name of *Mencius* was according to some authorities his own product, but according to Han Yu, who lived 768-824 A. D., this book was compiled by his disciples after his death. What Chong-tse was to the school of Lau-tse Mencius was to the school of Confucius. As the writings of the former gave form and consistency to the Doctrine of Reason and Virtue, so the eloquent and systematic exposition of the latter added finishing touches to the Teaching of Morals and Rights.

3. Hsin-tse.¹ Hsin-tse was another great apostle of the School of Confucius. He lived in the third century B. C. Of his literary works thirty-two essays on philosophy and government under the name of *Hsin-tse* are extant.

C. Yang Chu. This philosopher was the founder of a distinct school and has been considered as a contemporary of Lau-tse, the exact date and place of his birth being nowhere to be found. Pessimistic egoism, bearing a strong resemblance to Epicureanism, is the fundamental principle of his teaching. Among other things, Yang Chu said:

Generally a hundred years may be put as the limit of a man's age, to which hardly one out of a thousand attains. With one who attains to this limit, half of his time is occupied by infancy, childhood and old age. Of the remainder, sleep in the night and time wasted in the day again takes away a half. Of this remainder a half again is consumed in pain, disease, sorrow, grief, anxiety, and fear. And even in the some ten years remaining there is not a single moment of happiness unmixed with a care or a sorrow. Then what is

¹ His view of human nature in contrast with that of Mencius is given below.

the purpose and what is the pleasure of life? . . . In good old days people would not sacrifice even a hair to benefit others, nor would they receive any from others to benefit themselves. If everybody would not sacrifice a hair, and if everybody would not benefit others, the world would be in peace and order.¹

D. Mo Ti. He was a native of the Principality of Sung in the modern Province of Honan and lived in the fourth century B. C. For a time he was an officer of his Principality. As opposed to the egoism of Yang Chu, Mo Ti advocated universal love, and attributed the condition of turbulence prevailing in his life-time to selfishness. The general trend of his philosophy strongly suggests the Cosmopolitanism of the Stoics. Essays on various topics, such as; "Catholicism," "Universal Love," "Economy," "War Unjustifiable," "Music Unjustifiable," "Fatalism Untrue," etc., were written by him.²

Here follows a part of the first of his three essays on "Universal Love :"

Where does disorder in a country originate? It originates in the absence or lack of universal love. Disorder occurs when a son loves himself and does not love his parents, when a younger brother loves himself and does not love his elder brother, and when a subject loves himself and does not love his king. That robbers and thieves are such is of the same reason. A robber loves his own home and does not love the homes of others, so he robs of others' homes to benefit his own; a thief loves himself and does not love others, so he steals of others to benefit himself. Again, because the rulers of differ-

¹ From an essay entitled "Yang Chu" in the collection of *Lih-tse*.

² The collected essays were edited under the name of *Mo-tse*.

ent kingdoms confine their love to their respective territories, they attack and invade others to benefit their own.

But Mencius, learned, courageous, powerful in expression, and strong in personality, vigorously opposed and denounced the Epicureanism of Yang Chu on the one hand and the Cosmopolitanism of Mo Ti on the other. When once asked by his disciple Kung-tu-tse why he was so fond of arguing, he answered, saying :

It is not because I am fond of arguing, but because I cannot help doing it. . . . Rulers of wisdom do not appear, the feudal princes indulge in excesses, and the scholars abandon themselves to demoralizing discussion. The world is filled with the sayings of Yang and Mo, and every man becomes a follower either of the former or of the latter. The principle of Yang is selfishness thereby denying the proper obligation to the king, and that of Mo is universal love thereby denying the proper affection to the parents. But those who deny such obligation and such affection are beasts.¹

Thus by arguing, debating and refuting he withstood the aggression of what he regarded as immoral religions.

III. SCOPE OF THE CONFUCIAN SCHOOL

It should be understood that what has been called the political philosophy of the Confucian school was not originated by Confucius. The political system embodied in the Confucian philosophy had existed before him. It has been thought to have begun with Yau² (or even Fu Hsi 2852-2738 B. C.) and was successively improved upon

¹ *Mencius*: Book iii, part ii, chapter ix, sections 1 and 9 (part).

² Yau (2357-2258 B. C. reigning).

and expanded by Shun,¹ Yu,² Tang,³ Wen,⁴ Wu⁵ and Chau Kung.⁶

Tse-sze, the grandson of Confucius, said :

Chung-ni⁷ reproduced the doctrines of Yau and Shun and displayed those of Wen and Wu.⁸

Mencius, in describing the alternative occurrence of peace and anarchy in national progress, mentioned in the following words the great achievements of Yau, Shun, Yu, Wen, Wu, Chau Kung and Confucius, with the implication that the last mentioned carried on the work started by the predecessors :

In the time of Yau the waters overflowed their banks and inundated the Middle Kingdom. Consequently snakes and dragons found their habitations thereon, and the people, having no place to settle upon, were obliged to make nests on the low ground and dig caves on the high land. The Book of History⁹ records, saying, "the terrific water warns me."¹⁰

¹ Shun (2258-2206 B. C. reigning).

² Yu (2205-2198 B. C. reigning), the founder of the Hsia dynasty (2205-1766 B. C.)

³ Tang (1766-1753 B. C. reigning), the founder of the Shang dynasty (1766-1122 B. C.)

⁴ Wen (1184-1135 B. C. governing as the Duke of the Chau principality).

⁵ Wu (1122-1116 B. C. reigning), the founder of the Chau dynasty (1122-256 B. C.).

⁶ Chau Kung or Duke of Chau (1105 B. C. died), the fourth son of Wen.

⁷ *Chung-ni* is a name of Confucius.

⁸ *The Doctrine of the Mean*: Chapter xxx," section I.

⁹ The Book of History being the most ancient historical records extending from the time of Yau to the Chau dynasty.

¹⁰ *Me* denoting Yau.

This "terrific water" was the inundation. Shun¹ commanded Yu to abate the flood. Thereupon the latter dug ditches to conduct the water to the sea and drove the snakes and dragons to the marshes, with the result that the water flowed through the ground, forming the Kiang,² the Wei², the Ho², and the Han², and that the sources of danger were removed and the harmful birds and beasts disappeared.

After the death of Yau and Shun, government fell into decay, one tyrannical ruler succeeded another, who pulled down houses to make room for ponds and lakes for personal pleasure, with the effect that the people could find no place to rest in quietness. They also devastated cultivated lands, with the result that the people were left in want of food and clothing. Pernicious doctrines and violent acts ran rife; gardens, parks, ponds, lakes, woods, and marshes were seen everywhere; and harmful birds and beasts abounded once more. By the time of Chou³ the country was again in anarchy. Chau Kung, as the Assistant of King Wu, executed Chou, invaded Yen⁴ and put its ruler to death in three years, and killed Fei Lien⁵ after having driven him to the seashore. He conquered fifty small kingdoms and drove afar the tigers, leopards, rhinoceroses and elephants—to the great satisfaction of the whole nation. The Book of History records, saying, "How splendid was the plan of King Wen! And how energetically it was carried out by King Wu! These acts are of much assistance and enlightenment to the people of the succeeding generations by furnishing them models to correct themselves."

Once more the world was in decadence, and right principles were obscured. Again false doctrines and violent acts ap-

¹ Shun succeeding to Yau while the flood had not yet been abated.

² *Kiang, Wei, Ho, and Han* being the names of rivers.

³ Chou (1154-1122 B. C. reigning), the last ruler of the Shang dynasty (1766-1122 B. C.).

⁴ *Yen* being the name of a small kingdom in the modern province of Shantung.

⁵ *Fei Lien* being a favorite minister of King Chou.

peared. There were instances of regicide and patricide. Confucius, out of anxiety and apprehension, wrote *The Spring and Autumn*,¹ which, however, it was the business of the king to write. Therefore, he said, "It is through *The Spring and Autumn* that men will know me and also through it men will condemn me."²

Thus Confucianism embraces not only the political philosophy or governmental methods advanced by Confucius or elaborated by his followers, but also those originated and practised by the rulers previous to the time of Confucius in so far as they were recognized and approved by the great philosopher; and the reason why the philosophy, the government and the law, the last two of which will be treated in the following chapters, should be generally known by his name instead of by that of any of the previous rulers is due to the following facts: first, he was the best, the most eloquent, the clearest and the most systematic exponent of them all—what others could only inarticulately express, he skilfully wove into a coherent and harmonious whole; secondly, he revised the Book of Odes and the Book of Morals, arranged the Book of History, and annotated the Book of Change—each of which relates more or less to the previous illustrious rulers³, thereby making himself regarded as the successor of them all, so far as political civilization is concerned;

¹ *The Spring and Autumn* being the History of the Kingdom of Lu covering 722-481 B. C.

² *Mencius*: Book iii, part ii, chapter ix, sections 3-9.

³ Kung An-ko, an eleventh-generation descendant of Confucius living in the century before Christ, in his preface to the Book of History said:

"My ancestor Confucius, who lived at the end of the Chau dynasty, in view of the verbosity of the history and records and in fear of the adoption of different interpretations by their readers, revised *The Ceremonies* and *The Music* in order to bring out the established regulations into light; reduced the existing poetry to three hundred poems;

and thirdly, his moral character, surpassing wisdom, and extensive knowledge compelled reverence and respect from his contemporaries and the succeeding generations.

In order to have a fair idea of the admiration and wonder entertained by his contemporaries for him, let us quote the words of his disciples, Tsai-wo, Tse-kung, and Yu Yoh as follows :

Tsai-wo said :

Of what I know of him, our master surpassed by far Yau and Shun in worth and wisdom.

Tse-kung said :

By viewing the ceremonial performances of a king, he knows the character of his government, and by listening to his music, he knows the character of his virtue. At the distance of a hundred generations, he can arrange according to their merits the kings of a hundred ages. From the birth of mankind till the present day there has never been another like our master.

Yu Yoh said :

Is it only among men that it is so? There is the unicorn among animals, the phoenix among birds, the mountain among hills, and rivers and seas among streams. Though different

abridged the history into *The Spring and Autumn*; explained the principles of Change so as to reject *The Eight Researches* (a book on Eight Diagrams for the purpose of divination); recounted the Local Functions instead of *The Nine Hills* (geographies of the Nine Regions into which China was at first divided); and with due respect to the ancient historical records, commencing from the times of the Tang and Yu dynasties, preserved (while lopping off the verbosity and cutting away the redundancy so as to bring out main principles and important points which were worthy of being handed down from generation to generation for enlightenment) one hundred pieces consisting of Canons, Plans, Instructions, Announcements, Speeches and Charges.”

in degree they are the same in kind. So the sage among men is also the same in kind. But he stands out prominent among his fellows and rises above the common average. Since the appearance of the human race there has never been one so complete as Confucius!¹

IV. TRIUMPH OF THE CONFUCIAN SCHOOL

From the words of Mencius—"The world is filled with the sayings of Yang and Mo, and every man becomes a follower either of the former or of the latter"—in his reply to his disciple Kung-tu-tse, it is clearly indicated that for a time at least the teachings of the two philosophers had a considerable influence upon the minds of men. Undoubtedly Lau-tse must have had a very large number of followers, and judging from *Chong-tse* and *Lih-tse* the school of the *laissez-faire* philosophy must have been very strong at that time.

The wonder of the later generations is how and why the schools of Lau-tse, Yang Chu, and Mo Ti, once almost of equal strength to that of Confucius passed away at the close of the period of Warring Kingdoms (481-221 B. C.), while Confucianism, in spite of the very rude treatment suffered in the Chin dynasty (256-206 B. C.), stood its ground, and during the Han dynasty (206 B. C.-221 A. D.) its influence rose to a great height and has remained practically unimpaired to the present day.

It may be suggested that the strength and stability of the Confucian school has been maintained mainly for two reasons.

In the first place, it was (and still is) the most representative of the political ideas and notions of the Chinese people as may be readily seen from the fact that, as mentioned in the preceding section, Confucius, by recogniz-

¹ *Mencius*: Book iii, part i, chapter ii, sections 26-29.

ing and approving the words and deeds of Yau, Shun, Yu, Tang, Wen, Wu, and Chau Kung, embraced in his political philosophy all that the people had for ages delighted in and had been accustomed to. In other words, he was the spokesman of their political desires and impulses. On the other hand, the philosophies of Lau-tse, Yang Chu, and Mo Ti were called into existence only by the circumstances of the extraordinary times. The latitudinarian and *laissez-faire* principle of Lau-tse was a reaction against the vexatious, undue, and excessive governmental interference at the end of the Chau dynasty. The pessimistic egoism of Yang Chu bespoke the mental agony of a man, who, despairing of arriving at a satisfactory way of securing permanent peace and happiness to the people, delivered the pronouncement that, "If everybody would not sacrifice a hair, and if everybody would not benefit others, the world would be in peace and order." The universal-love doctrine must have been suggested to Mo Ti during his diligent search after the cause of the ceaseless struggle and conflict prevailing at that time. Thinking that he had obtained the object of his pursuit, he laboriously explained to the world that the absence of universal love was the sole cause of the chronic troubles of the time, and that the escape therefrom must be sought in its immediate practice. Thus, as all of them were the creatures of their own extraordinary times, so their doctrines passed away when the conditions out of which they grew disappeared.

In the second place, Confucianism is the most conducive to the maintenance of monarchical institutions. It recognizes and supports, among others, the principle of kingship and single-headed government. The speedy fall of the Chin dynasty has been commonly attributed

to its disregard shown to some of the Confucian teachings, especially, as it has been said, to the institution of feudalism.¹ The founder² of the Han dynasty, being a military man, used to amuse himself by jesting at Confucian scholars, but upon ascending to the throne he found the necessity for their service, and thenceforward he was obliged to pay them respect. In the year 195 B. C. he worshipped the memory of Confucius at the birthplace of the sage. Although the teachings of Lau-tse, Yang Chu, and Mo Ti might be very fascinating to theorists and dreamers, in practice they were found of no avail. In times of general turbulence, when men are looking for new formulas to solve the newly arisen problems, such teachings may render a great service by ministering solace to the minds of the despondent and drawing them on to new hopes. But their influence will cease with the cessation of such times. Since the resumption of peace and order after the period of commotion (481-221 B. C.). Confucianism has again run along its natural course and permeated every political institution, so much so,

¹ The abolition of the feudal system by the Chin dynasty has been persistently but, in our view, erroneously regarded by many eminent scholars as the greatest crime ever perpetrated by that dynasty. Now at the distance of over two thousand years when historians may review the acts of former dynasties with tolerable impartiality, we, in the light of the constitutional development in other nations, cannot regard this act as un-Confucian, if by Confucian one means, among other things, the natural and orderly growth of a political system. The preservation of the proper dignity and power of the Crown was the object he was laboring for, while the feudal system was the means to the end. By the time of the Chin dynasty feudalism had already accomplished its mission and spent its energy. The substitution of absolutism was demanded by the time and thrust upon the shoulders of that dynasty by circumstances. That the shortness of the existence of the Chin dynasty was not the result of the overthrow of feudalism can be inferred from the fact that after that time this system could never be revived.

¹ Kau Tsu (206-194 B. C.).

that in the domain of politics *Chinese* and *Confucian* may be regarded as synonymous terms. After this brief description of these four leading schools and this attempted tracing out of the complete triumph of the Confucian school, let us now make an examination into the Confucian political philosophy itself.

V. POLITICAL PHILOSOPHY OF THE CONFUCIAN SCHOOL

A. Political Organization to be in Conformity with Nature. Running through all the political literature extant, characteristic of all the political works of the modern writers, and pervading with no exception the political conception of the whole Chinese people, is the notion of the absolute necessity of government. Whatever name it may assume—imperium, regnum, or dominium—from whatever source its authority may be alleged to have been derived, in whatever way it may be impersonated or embodied, and by whatever method it may be expressed, the conviction of necessity of government—a supreme political authority possessed and exercised by one member of the community over the rest—is too firmly established in the minds of the Chinese people to be shaken.

The Confucian school has urged the importance of establishing government and constructing it in accordance with examples furnished by nature. Look above you at night and you will see the north star sitting, serene and motionless, and receiving homage from the surrounding stars. Look around you in the day, and you will see the high mountain dominating low ranges, and the majestic rolling ocean accepting tributes from various rivers. To frame rules and co-ordinate human activities so as to compel men to act in conformity with natural law and to prevent them from deviating there-

from, such a relation must be established between ruler and subjects as that subsisting between the north star and the surrounding revolving stars, between the high mountain and the low ranges, and between the ocean and the rivers.¹

Heaven, earth, and man, runs the Confucian doctrine, are called the three constituents of the universe, and natural law—fixed, immutable, and inherent in any part thereof—is operating unceasingly and impartially. The function of heaven is to afford seasons; that of earth, wealth; and that of man, to keep peace and order. Seasons are constant, wealth is the same, but government may be good or bad according to the governor. Good government consists in endeavoring to keep in conformity with the natural law, whereas any action in contravention thereof or deviation therefrom is misrule.²

B. Divine Appointment. After having decided that government must be organized according to natural law, the next question presenting itself in the order of Confucian political thought is: Who shall govern? What authority has any particular man that entitles him to govern others, and by virtue of being governor to impose his will upon the wills of other men and enforce the imposition by punishment? To that question the Book of History answers with no hesitation that the authority is derived from on high—“Heaven gives birth to millions of people and for them it erects the king and teacher.”³

¹ *Confucian Analects*, Book ii, chapter i. Confucius says: “He who exercises government by means of virtue may be compared to the north star, which keeps its place while all the other stars turn toward it.”

² Read *Hsin-tse* in the essay on “Nature.”

³ *Book of History*: The Great Declaration, section 7 (part).

But heaven is silent. How can the people find out the member among themselves who has received the divine appointment to the government? A proclamation announcing the appointment of the founder¹ of the second long dynasty² by his prime minister³ illustrates the manner of ascertaining the divine will:

Heaven gives birth to people with such desires and passions that they, without a ruler over them, would fall into disorder and confusion. It also gives birth to men of intelligence, whose business it is to regulate these desires and passions. The king of the overthrown dynasty had his virtue obscured, and the people, as it were, fell into quagmires and burning charcoal. Thereupon, it endowed our present king with valor and wisdom to serve as the mark and standard to the princes of the myriad states and to continue the work of Yu, the founder of the overthrown dynasty. Now our king is ruling after the example set by that great king to fulfil the appointment of heaven.

The defeated king was really an offender in the eye of the Supreme Being. He, possessing no virtue equal to the sacred task, pretended to the sanction of heaven to issue commands. Thereupon the Supreme Being viewed him with disapprobation and caused our king to receive the appointment and to govern the multitude of people.

Mighty princes and powerful barons were not wanting, while the principality of our former prince and present king was only a weed among a field of springing corn and a tare among a vast expanse of grain. The people of the principality, old and young, were constantly in fear though they had committed no crime. Moreover, the position of our prince and the material strength of the Principality were by no means sufficient to command respect.

¹ Tang (1766-1753 B. C. reigning).

² The Shang dynasty (1766-1122 B. C.)

³ Chung-Whui.

Our king keeps distant from indulgence and does not seek to accumulate wealth and property. Upon the men of virtue he confers high office; to those of great merits he gives rewards. Being magnanimous and benevolent, confidence is reposed in him by all the people.¹

C. Reason for the Existence of Government.

The next question naturally arising in the mind of a thoughtful person is: Why should Heaven raise a man to govern the rest? Or, conversely, why should a man surrender, in his pursuit of satisfying, magnifying, and elevating his being, a part of his liberty to another man? This question is answered by the opening sentences of the Announcement quoted above, namely: "Heaven gives birth to people with such desires and passions that they without a ruler over them would fall into disorder and confusion, and it also gives birth to men of intelligence, whose business it is to regulate these desires and passions."

Mencius and Hsin-tse, both great disciples of Confucius, though diametrically opposed to each other as to their theories on human nature, reached the same conclusion in reference to the reason for the existence of government.

1. Optimistic view of human nature: Mencius. To explain the tenets of Mencius with regard to human nature, we may quote some parts of his conversation on that subject with two of his disciples.

*Kau-tse:*² Man's nature is like the willow; benevolence and justice are like a bowl. The fashioning of benevolence and justice out of man's nature is like the making of the bowl out of the willow.

¹ *Book of History*: the announcement of Chung Whui, sections 1-6.

² A disciple of Mencius.

Mencius : Can you, while leaving untouched the nature of the willow, make out of it a bowl? If you cannot, you must first do violence and injury to the willow before you can make it. Similarly, according to your doctrine, you must do violence and injury to human nature in order to fashion out of it benevolence and justice.

Kau-tse : Man's nature is like water whirling round and round in a corner. Open a passage for it in the east, and it flows to the east; open a passage for it to the west, and it flows to the west. Man's nature is indifferent to good or evil just as water is indifferent to the east or to the west.

Mencius : Water will indeed flow indifferently to the east or to the west, but will it flow indifferently up and down? The tendency of man's nature to good is like the tendency of water to flow downward. As there is no water but tends to that direction, so there is no man but tends to good.

By striking water and causing it to leap up certainly you may make it spring over your head; or by damming and leading it you may force it up a hill. But are these movements according to the nature of water? It is the force applied which causes those movements. When a man is caused to do what is not good he is dealt with in the same way.

Kung-tu-tse :¹ Kau-tse says that man's nature is neither good nor evil. Another philosopher says that it may be made good or evil, and accordingly during the reigns of good kings the people love virtue and during those of bad kings they are disposed to cruelty. A third philosopher says that the nature of some people is good and that of others is evil, and therefore under illustrious and virtuous kings there are still bad characters and under dissolute and immoral rulers good men can also be found.

Mencius : Judging from man's feelings his nature is so constituted as is calculated to be good. If a man's action is to the contrary, the blame cannot be laid on his nature. The feeling of sympathy and commiseration is common to all men,

¹ Another disciple of Mencius.

so is that of shame and dislike, so is that of reverence and respect, and so is that of approving and disapproving. The feeling of sympathy and commiseration implies the existence of benevolence; that of shame and dislike, the existence of justice; that of reverence and respect, the existence of propriety; and that of approving and disapproving, the existence of knowledge. Benevolence, justice, propriety, and knowledge are not instilled into us from without but are innate in our being. That we do not feel their existence in us is because we do not reflect and introspect. Hence it is said, "Seek and you will find them: neglect and you will lose them."

The Book of Odes says:

"Heaven in giving birth to a multitude of men,
Endows them with faculties each having its specific law;
And the people in exercising the faculty endowed
Love admirable virtues."

In years of good harvest, it is true, young men are mostly lazy, while in years of scarcity they abandon themselves to evils. But this difference of their conduct is not attributable to the difference of faculties conferred upon them by heaven, but it is the result of the operation of the circumstances upon the minds. Sow the seeds of barley in the field and cover them up—provided the quality of the soil and the time of their sowing be the same—and soon they spring into luxuriance; and, finally, when the beaming sun comes over them, they are all ripe. If there is any difference, it is owing to the slight inequalities in the fertility of the soil, in the nourishment afforded by rain and dew, and in the amount of labor applied by the farmer.

All beings the same in kind are like one another: why should we doubt regarding men, as if they were the solitary exception to the general rule. A sage and I are the same in kind.

By way of confirming my conviction on this point one eminent scholar once said: "If a sandal-maker should be asked to make a pair of sandals without being told the size

wanted, I am sure he will not make them like baskets : sandals are all alike, for men's feet are all alike."

Men's mouths agree in enjoying relishes; their ears, in enjoying music; and their eyes, in enjoying color. Is it possible that the minds of men have nothing to enjoy in common? It is benevolence and justice which a sage and a common person agree in enjoying.¹

Having thus followed Mencius in his eloquent and earnest contention for the innate good of human nature over against artificial good, universal good over against partial good, and absolute good over against conditional good, let us listen to Hsin-tse, Mencius' antagonist on this question.

2. *Pessimistic view of human nature: Hsin-tse.*

Hsin-tse: Man's nature is radically evil : when it is good it is the product of art. In his nature there is the impulse of greed, and in acting in accordance with that impulse quarrels and struggles between man and man arise, while complaisance and deference vanish; in it there is the impulse of hate, and in following out that impulse malice and injury appear, while justice and faithfulness are lost ; and in it there are also the desires through the eyes and the ears for beauty and music, and acting in obedience to these desires excess and anarchy will be the result, and peace and order are nowhere to be found. Therefore in allowing the nature free play, the consequences are quarrels and struggles, malice and injury, excess and anarchy. To prevent these results, the nature should be disciplined by precepts and laws and guided by morals and rights. Unless that is done, do not expect complaisance and deference, justice and faithfulness, peace and order.

A curved stick, to be straightened, must be rolled ; a piece of metal, to be sharp, must be whetted ; and so the nature of man; to be good, must be disciplined. The great kings of

¹ From *Mencius*: Book vi, part i, chapters i-viii.

former days, having discovered and ascertained the nature of man to be partial, dangerous, rebellious, and anarchical, instituted morals; created rights; established laws; and set standards, weights, measures, and sizes to correct, drill, and guide it. To-day, who are the so-called civilized men except those who have been influenced by precepts and laws, and conduct themselves according to morals and rights? And who are the so-called barbarians except those who allow their passions free play and follow their desires without restraint?

According to Mencius, the nature of man is inherently good, and what is acquired only supplements his inherently good nature. This only shows his insufficient knowledge of human nature and his failure to observe the distinction between nature and art. Nature is that which is implanted in us by Heaven, not to be added to by learning nor to be cultivated by effort. Morals and rights are created by great kings, and therefore the ability to act in accordance with *them* can be acquired through application and accomplished through exertion. By nature we see through the eyes and hear through the ears; the fact that we do so is because the power of seeing inheres in the eyes and that of hearing inheres in the ears; but those two powers, as everybody knows, cannot be acquired through culture.

According to Mencius, the nature of man is good; and when it is apparently bad, it is not because the nature is bad, but because a man has lost or impaired his inherent qualities. But in holding that the nature of man is good it must be implied that its inherent qualities cannot be lost or impaired. The moment he admits that the nature, when left to itself is apt to be impaired or lost, as he should admit, he denies the truth or validity of his doctrine that the nature is good.

By nature a man, when hungry, desires to eat; when cold, desires to clothe himself; and when tired, desires to rest. Yet to-day a man, in case he sees his father or brother in the same condition, will desist from gratification in deference to his father or brother. Such action or rather inhibition from action is against his nature, yet it is in accordance with the

principle of a dutiful son or of an affectionate brother and with the established morals and rights. Following the nature there will be no self restraint and no deference.

Some may ask : " If the nature is radically evil how can you account for the origin and existence of morals and rights ? " In reply, it may be said that morals and rights are the results of the art of sages and great kings. When a potter fashions clay into a utensil or a carpenter cuts wood into an instrument, the utensil or the instrument is the product of the art of the potter or of the carpenter. Similarly, when a sage after mature consideration and deliberation establishes morals and rights these institutions are not the immediate product of nature. The delight of the eyes for color, that of the ears for music, that of the mouth for relish, that of the mind for interests, and that of the whole physical constitution for ease are facts by themselves in contradistinction to those which are not facts until after human intervention shall have been introduced. The sages first modify the nature to form habits ; then establish morals and rights ; and finally fix laws, standards, weights, measures, and sizes. Where the sages and the multitude agree with each other is nature, and where they differ is art.

A person desires to be handsome when he is ugly, to be noble when he is mean, and to be rich when he is poor : a handsome man does not desire to be handsome, nor a noble to be noble, nor a rich man to be rich. Thus it signifies that a man manifests his craving only when he is not the possessor of the object of the craving. The reason why men are earnestly striving to have morals and rights is because they do not possess them in their nature.

Peace and order have been regarded as good and violence and anarchy as evil by all men in all times. If the nature tends to peace and order, of what use are morals and rights ? But the nature is evil. The sages, after having recognized the fact that the nature tends to violence and anarchy, compel the people to act in peace and order and to conduct themselves with respect to the general welfare by setting up gov-

ernment to command, establishing morals and rights to guide, making laws to regulate, and providing pains and penalties to restrain. Imagine you abolish the existing government with all its paraphernalia, I mean, morals and rights, laws and regulations, pains and penalties, and then you take a look at the conduct of the people, you will see the stronger robbing the weaker of their property, and the mobbish majority by their mere brutal force drowning the voice of the minority. In a moment the state falls into a hopeless anarchy. Yet Mencius says: "Human nature is good."

A good teacher of the past seeks its proof in the present; a wise student of the supernatural looks for support in the natural; an argument, to be of any value, must be borne out by facts. What one advocates, while sitting, should be capable of being put into action. Mencius' eager and eloquent argument for the radical good of human nature, while being a string of acute reasoning, finds no support in facts. If it is admitted that human nature is good, there would be no morals and rights. The roller was contrived because there is bent wood; the level was invented because there are undulating surfaces.¹

3. *Identity of the conclusion arrived at by both philosophers.* Thus, Mencius firmly maintains that a man's nature at the time of birth is innocent, perfect, and heavenly, but when he, on growing older, plunges into the world, his innocent, perfect, and heavenly nature, through contact with vicious environment, is tarnished. Therefore, the government should direct its attention and effort as well to removing the vicious influences to prevent them from soiling the innate good nature, as to emancipating the contaminated nature from evil influences.

But Hsin-tse, born in an age of incessant belligerency and repeatedly suffering bitter disappointments and ad-

¹ From *Hsin-tse: An essay on "Human Nature being Evil."*

versities, clung to the conviction that man's nature is radically evil.

Divergent as their beliefs were with regard to the nature of man, they were at one as to the belief in the amenability of that nature and in the possibility of its being elevated to such a point and brought to such a condition that peace and order among associated men may be realized—according to Mencius by preventing and removing contaminating influences, and according to Hsin-tse by curbing, guiding, and regulating the passions and impulses with morals and rights. Furthermore, they also agreed as to the method of bringing about the desired end. Spurning the *laissez-faire* doctrine of the southern school (Lau-tse and Chong-tse) these philosophers, being true disciples of Confucius, were strong monarchists, and therefore strongly advocated the maintenance, for the welfare of society, of a supreme political authority to guide and regulate the people by means of Government and Law.

CHAPTER II¹

FEUDALISM (2205[?]-221 B.C.)

I. THEORIES OF GOVERNMENT

A. The Grand Commonwealth.

In full consonance with the spirit of the age the Confucian school, sharing in the sentiment of Lau-tse and Chong-tse, sometimes also indulged in painting for themselves an ideal state, which once existed, where, to quote their own words :

Reason has its sway, the world is a commonwealth, the worthy and the able are alone called to office, and sincerity and harmony are the principal objects cultivated and sought for. Hence men do not love their own parents or their own children only. There are provisions for the aged, work for the able-bodied, education for the young, and sustenance for the widows, orphans, childless men and women, the defective, and the diseased. All the males are given proper work, and all the females have their homes. The people try hardest to extract wealth from the ground but not necessarily for their private uses; they exert their utmost effort in labor but not necessarily for their own benefit. The result is that selfish-

¹This chapter is based on Chau Kwan (the administration of the Chau dynasty) of the Book of History, "Li Yung" (Constitution in Motion) and "Wang Chih" (Royal Regulations) of *Li Ki* (Record of Ceremonies), and on Chau Li (the Governmental System of the Chau dynasty). The last two books describe the system, both governmental and social, of the Chau dynasty (1122-256 B. C.). They are thought to have been written in the early part of the Chau dynasty and revised by Confucius.

ness, scheming and monopoly are not seen ; robbery, theft, violence, and wrong-doing are unknown ; and doors and gates remain open day and night. This is called the Grand Commonwealth.

B. The Inferior Peace.

This notion of an ideal state brought the Confucian school into line with the believers of the *laissez-faire* philosophy mentioned before, but the important point of difference between them was this : the Confucian school knew that the Grand Commonwealth was an unattainable Utopia, but they did not give themselves up to pathetic repining over the good old days, nor like a peevish child, failing to get all that he wants, resolve to take nothing at all. On the contrary they unflinchingly set about devising a system to secure peace, order, happiness, and prosperity to the extent permitted by the existing circumstances. Their practical system was called the Inferior Peace.

In other words, they believed that there had been an age of reason but it had disappeared and royal rule had sprung up of necessity. To put it in their own words :

Since the disappearance of the sway of reason mankind has broken itself up into families, each person loving his own parents and own children, appropriating wealth for his own use and putting forth his energy for his own purposes. The princes restrict the succession to their own sons and brothers, and to protect themselves and their property they erect high walls and dig deep moats. They carefully formulate a body of morals and rights by which the proper bond between the ruler and the ruled is secured, the affection between parents and children is strengthened, the harmony between brother and brother is promoted, the love between husband and wife is maintained, the rules and regulations for governing the people are established, land for habitation and cultivation is

granted, and men of wisdom and valor are rewarded. Works are undertaken and enterprises attempted only to satisfy their personal ambitions. Hence intrigues and exploitation run rife, and clashes of interest necessitate recourse to arms. It is exactly in this way that Yu, Tang, Wen, Wu, Chen,¹ and Chau Kung sprang up. By directing and concentrating their attention on morals and rights—by bringing out the underlying principles and establishing them with examples, and punishing those who violated these rules—they rose to power as kings. Thenceforward any king who attempted to deviate from the road struck out by these six rulers was immediately dethroned and scorned by all as base and unworthy. This is called the Inferior Peace.

On the basis of this theory kingship was defended in these words:

Heaven produces the seasons, the earth yields wealth, parents afford nurture and education to their children, but the king adjusts and co-ordinates all these agencies. He can do no wrong. He is to be respected and not to respect, to be supported and not to support, to be served and not to serve: for to serve others implies the possibility of doing wrong; to support others, the possibility of being unable to carry on and execute the governmental functions; and to respect others, the possibility of impairing his dignity. On the other hand, the people by respecting the king respect themselves, by supporting him obtain and enjoy abundance, and by serving him attain to distinction and exaltation.²

II. FEUDAL GOVERNMENT

Like the nations of Western Europe China passed through a feudal regime. As in the west its origin is

¹ Chen Wang (1115-1078 B. C.) being the successor of Wu Wang.

² This and the above two quotations are from "Li Yung" (Constitution in Motion) of *Li Ki* (Record of Ceremonies).

lost in the early beginnings of society. Ma Tuan-ling (13th century A. D.), the author of a Chinese political encyclopædia, in his preface to the chapter on Feudalism said: "Nobody knows the origin of feudalism. What is known is that at the meeting of Tusan (in the modern Province of Anhui) called by Yu, numerous nations are said to be present; at the time of Tang's succession to the throne there were 3,000 nations; the Chau dynasty established five classes of vassals which numbered 1,773; and by the time of *The Spring and Autumn* only 165 were recorded in the Classics." For the sake of convenience we may say that feudalism ended in 221 B. C., when the first Emperor of the Chin dynasty divided the country into thirty-six administrative districts.

The feudal system at its height is described in the writings of the Confucian school, from which the following survey is taken.

A. Structure.

1. *The king.* At the head of the feudal hierarchy is the king, who reserves to himself a domain of 1,000 *li*¹ by length and breadth to defray his public and private expenses, distributes honors and emoluments, sees that the royal constitution is upheld, and appoints advisers and assistants to carry out his work.

2. *Feudal princes.* Under and created by the king there are five classes of feudal princes, namely, the duke, the marquis, the earl, the count, and the baron. The feudal principalities of the first two classes are called large states; those of the third, middle states; and those of the last two, small states.

3. *Royal and feudal functionaries.* Directly under

¹ A modern *li* is equal to 1894.12 English feet, but an ancient *li* was less than this.

the king [there are his personal advisers and assistants, consisting of three councillors, nine ministers, twenty-seven officers, and eighty-one high scholars. Under the prince of a large state there are three ministers all appointed by the king, five low officers, and twenty-seven high scholars; under the prince of a middle state there are three ministers, two of whom are appointed by the king and the other by the prince himself, five low officers, and twenty-seven high scholars; under the prince of a small state there are two ministers both appointed by the king, five low officers, and twenty-seven high ministers.

4. *Emoluments of the king and the feudal princes.* The territory of the king is 1,000 *li* square, that of the duke or the marquis is 100 *li* square, that of the earl is 70 *li* square, and that of the count or of the baron is 50 *li* square. A territory which is not 50 *li* is not classified immediately under the king, but is attached to the territory of any one of the princes mentioned above, and is thus called an Attached Territory.

5. *Emoluments of the royal functionaries.* The territory of each of the three royal councillors is equal to that of the duke or of the marquis; the territory of a royal minister, to that of the earl; the territory of a royal officer, to that of the count or of the baron; and the territory of a royal scholar, to that of the lord of an attached territory.

6. *Emoluments of the feudal functionaries.* The emolument of a low scholar of a feudal state is equal to that of a farmer with land of the first-degree fertility, namely, land whose annual produce is sufficient to support nine persons; the emolument of a middle scholar is twice that of a low scholar; the emolument of a high scholar is twice that of a middle scholar; the emolument of an officer is twice that of a high scholar; and the

emolument of a minister is four times that of an officer. But in a middle state or a small state the emoluments of the ministers are only thrice and twice those of their officers respectively.

7. *Comparative ranks of the feudal functionaries of the three classes of states.* A high officer of a middle state ranks with a middle officer of a large state; a middle officer with a low officer, and a low officer with a high scholar. A high officer of a small state is of the equal dignity with a low officer of a large state; a middle officer with a high scholar, and a low officer with a low scholar.

8. *Political territorial divisions.* All the land within the kingdom, to the outmost confines, is divided into 9 "regions," each¹ being 1,000 *li* square, and embracing 30 states of 100 *li* square, 60 states of 70 *li* square, and 120 states of 50 *li* square—in all 210 states. High mountains and great waters are not granted to princes, but belong to all the people. The rest consists of attached territories and the unoccupied or reserved land of the Crown.

In all there are 1,773² feudal states in the nine regions.

B. Governmental system.

1. *Legislation.* It is the duty of the king, it is urged by the Confucian school, to observe the changes in the social conditions, to watch the needs of the people, and accordingly enact laws to promote the welfare of the country. To supplement his efforts and lighten his burden in this work, the offices of the three councillors

¹ Except the region of the royal domain, where there are only 93 states.

² There are only 93 feudal states in the region where the royal domain is.

and three assistant councillors are created, whose duty it is primarily to assist the king in making, revising, amending and abrogating laws so as to bring the government into conformity with the existing conditions.

The three councillors are : first, the senior tutor, whose function it is to give advice and interpret and explain the customary laws of the preceding dynasties ; second, the senior chancellor, whose function it is to assist the king in carrying out his immediate and personal orders or decrees in connection with the state affairs ; and third, the senior guardian, whose function it is to prevent him from plunging into any excess and aid him in doing justice in all times. The three councillors hold periodical sessions to debate, discuss and discover the political, social and economic forces at work behind the actual administrative system, and then inform the king of their conclusions, so that he, as the head of the government, can adjust the rules and regulations in conformity with the unseen forces. Thus, only men of extraordinary endowments and long experience are competent for these highly important offices. Satisfactory qualifications are the unconditional prerequisites to appointment and some seats may be left vacant without danger, if no competent men are found.

Next come the three assistants, namely, the junior tutor, the junior chancellor, and the junior guardian. Their positions stand between the councillors and the heads of the departments and their function is to supplement those of the councillors.

2. *Promulgation.* On the first day of the first month of every year the laws to be operative in the current administrative year are published simultaneously in all the feudal states as well as in the royal domain both in the city and in the country by posting them for ten days high over the city gates or other public places.

3. *Administrative departments.* There are six administrative departments, namely, the Celestial Department, the Terrestrial Department, the Spring Department, the Summer Department, the Autumn Department, and the Winter Department.

a. The Celestial Department. The head of the Celestial Department is called the prime minister, whose function it is to control the administration of the whole kingdom, to govern and regulate all administrative affairs, to grade the tributes from the various feudal states, and to adjust annual expenditure with revenue.

He alone has the right as well as the obligation to fix the budget for the next fiscal year, which he does at the close of every year when the grain has been garnered. The amount to be spent is adjusted to the size of the territory over which it is to be applied and to the amount of the revenue of the current year. It is usually the average of the preceding thirty years, but always limited by the revenue.

For the purpose of religious worship a tenth part of the expenditure is appropriated, and for the purpose of mourning in case of the death of the king a tenth of the amount of the preceding three years' expenditure is set apart. But during the three years' mourning, except to Heaven, Earth, the Spirits of Territory and Grain, the king does not make any sacrifice, and also renounces all kinds of luxury.

The amount to be spent on worship is not to be increased in a year of abundance nor to be decreased in one of scarcity. When there is no sufficiency for mourning and worship, it must be owing to waste; and when there is a surplus left after the necessary amount has been spent, the state is said to be affluent.

It is deemed a condition of insufficiency if there be no

provision for nine years in advance, one of urgency if there be not enough accumulation for six years, and if three years' food be not prepared the country is said to be on the border of destruction. Three years' husbandry ought to yield a surplus for one year; and thus continuing for thirty years without any interruption, the people of the country, even though there be times of scarcity, drought, flood, or overflow of water, will not suffer starvation, and the king is warranted to enjoy music at meals.

b. The Terrestrial Department. The head of the Terrestrial Department is called the minister of population, whose function it is to direct the state education, inculcate the seven ethical relations, and minister to the needs of the people. To be more specific, the minister of population is to curb the people's passions and inordinate desires; to define and set forth the six ceremonies—conferring the hat, marriage, mourning, worship, banqueting, and audience; to stimulate their love for virtue illustrated and exemplified by the seven ethical relations—the relation between parent and child, between brother and brother, between husband and wife, between ruler and subject, between old and young, between friend and friend, and between host and guest; to guard against any confusion and excess; to regulate the eight objects of government—food, costume, professions, social status, standards, weights, measures, numeric system, and sizes; to bring the barbarians to the adoption of the Chinese manners and customs; to inculcate a uniform conception of right and virtue; to encourage filial piety; to provide for the aged, the unfortunate, and the needy; to grant aid to the orphans and the childless; to exalt virtue and pay honor to the worthy; and to punish all offenders and recalcitrants.

Special emphasis is given to the last two of these functions, namely, the promotion of the worthy and the punishment of the law-breakers. Orders are given requiring every district to send up to the minister those youths found to possess virtue, character, intelligence, and ability. The youths thus sent up are named "select scholars." After an examination the more promising ones, called "eminent scholars," are sent up to the University and after entrance, when they are designated as "accomplishing scholars," they are no more subject to service in their several districts nor under the minister. They are taught principally poetry, history, ceremony, and music, the former two in winter and summer and the latter in spring and autumn. The University admits not only the accomplishing scholars from the districts but also the sons of the king, of feudal princes, of ministers, of officers, and of high scholars. It is not social status but age that is the condition of entrance—a youth enters the college at fifteen years of age and the University at eighteen. After an examination at the close of the prescribed course the chief instructor reports the names of the proficient students to the king and sends them over to the minister of war. Then they are called "scholars ready for government service."

On the other hand orders are also given to every district directing it to report to the minister of population the names of those youths who do not conduct themselves in accordance with the rules of morality. Upon receiving the report the minister appoints a day on which the aged men of that district are required to assemble in the school. The archery exercise is repeated to give distinction to the more skilful and the banqueting ceremony is performed to show the deference due to one's elders, in which the minister and the eminent scholars personally superintend.

If the disobedient are found wilfully persistent in their conduct, they are ordered to remove to the left portion of the district to live if they have resided in the right portion; and *vice versa*. After a certain period the same test is repeated; and if they are found to have made no improvement they are removed to an outlying portion. After a third trial they are removed to a more distant region; and after a fourth, expelled to a remote land and excluded from social and political distinction for life.

With regard to the discipline in the University, rules require the instructors and assistants to report the names of the delinquents, if there be any, to the chief instructor, who, in turn, reports them to the king. The latter will immediately send some of his councillors, ministers, officers and scholars personally to give a warning to the delinquents with a view to bringing about their reformation. This failing, he will personally come to the University; and if he is disappointed, the delinquents will be punished with a temporary exile to some distant region and will be perpetually excluded from enjoying political rights.

c. The Spring Department. The head of the Spring Department is called the minister of religion, whose function it is to attend to the national religious ceremonies and rites relating on the one hand to the worship of Heaven, Earth, and Spirits, and on the other to celebrations, funerals, diplomatic ceremony, army ceremony, and endowments.

The king alone can worship Heaven, Earth, High Mountains, and Large Rivers; a prince, the Spirits of Territory and Grain, and the High Mountains and Large Rivers within his territory; and an officer, his domain. Either the king or a prince may offer sacrifice to the spirits of the lords whose territories have been incorporated into

or annexed to the royal domain or the feudal state on account of the discontinuation of their line of succession.

In ancestral worship the king worships four times a year—in spring, summer, autumn and winter. In the spring he goes to the mausoleums of his ancestors separately, and in the remaining seasons the sacrifice is made before all the wooden tablets in the ancestral temple at the same time.

For a prince, on account of his visits to the king at the capital, there can be only two sacrifices a year, so he performs the ceremony either in spring and autumn or in summer and winter.

The ancestral temple of the king consists of seven compartments—one in the centre facing south for the first known ancestor of the reigning family, two immediately below the central compartment—one on the right and the other on the left—for the founder of the dynasty and his father respectively, and four further below—two on each side—for the four generations immediately preceding the reigning king. That of a prince embraces five compartments; that of an officer, three; that of a scholar, one; and the common people worship in the main hall of their houses.

The king after his death is encoffined on the seventh day and interred in the seventh month; a prince, encoffined on the fifth day and interred in the fifth month; and an officer, a scholar, or a common person, encoffined on the third day and interred in the third month. In performing these ceremonies no other business is allowed to interfere. Extending from the king to a common person the mourning rites are according to the dignity of the dead, but the sacrificial rites follow the rank of the one who offers the sacrifice.

In offering sacrifice to the Spirits of Territory and

Grain the king uses an ox, a ram, and a boar; a prince, a ram and a boar only; and an officer or a scholar, if he possesses land, offers entire animals; if he possesses no land, any food in season.

Without sufficient cause a prince is not to kill an ox; an officer, a sheep; a scholar, a pig; and a common person may not eat luxuries. The various articles of food on a banquet table should not surpass in value and delicacy those offered at a sacrifice; the clothing worn on ordinary days should not be superior to the sacrificial robes; and the residential houses should not excel in dignity the ancestral temples.

d. The Summer Department. The head of the Summer Department is called the minister of war, whose function it is to superintend military affairs in general, to sanction military expeditions, to determine the organization of the army, to suppress any insurrection or rebellion within the territory, and to appoint and dismiss governmental employees.

Upon the presentation of the graduates of the University by the chief instructor as above mentioned, the minister of war makes an examination of the scholars to find out their various aptitudes and abilities fit for various functions and employments in the government. Then he selects the best and ablest from among them, and presents his decision to the king for approval. He will not assign any governmental work to any of the scholars until his decisions have been approved; nor will he grant any positions with the emoluments attached until they are found equal to their tasks after having passed through the probationary periods.

An officer dismissed on account of incompetency will never be readmitted. After death he will be interred according to the rites of the scholar.

Before fitting out a military expedition he notifies and requests the minister of population to give orders throughout the land that special attention be paid to the military drill of the scholars.

Physical strength is also required of one who professes any art; and thus, one, before being sent to a distant place on a certain mission is subject to a trial as to the nimbleness of his limbs in an archery and chariot-driving test.

The professional men are the priest, the historian, the archer, the chariot-driver, and the mechanic. They are not allowed to take two professions at the same time, nor to change one profession for another. The professional men and those not engaged in the service of the kingdom or of a feudal state, are not allowed to rank with a scholar outside their own districts.

e. The Autumn Department. The head of the Autumn Department is called the minister of justice whose function it is to guard over the laws, define and interpret them, see that appropriate punishments be inflicted in all cases, and in the final instance punish convicts, subordinates, and offenders against the law.

(1) Instructions to the judge.

(a) A judge to obtain the true merits of a case, criminal or civil, and to secure justice, may unofficially refer the facts of the case to his colleagues, associates, subordinates, and the people for their opinion in the matter.

(b) If it is found that in the defendant there is only a criminal intent without being coupled with an act the case may be dismissed.

(c) Where the criminal act is not prompted by a criminal intent or only by an intent whose degree of criminality falls below that of the criminality of the act, distinctions should be made.

(d) In trying a criminal case where the natural affection as that subsisting between parent and child or the legal relation as that subsisting between king and subject influences the criminal act of the defendant, due consideration must be given.

(e) In trying a case the judge should exert and exercise his intelligence to the fullest extent and take an unbiased and sympathetic attitude toward the defendant, *i. e.* such as the normal man would do.

(f) If the judge cannot decide a case after having exhausted his ability the people may be invited to render a decision. If the people are doubtful about the case the benefit of the doubt is given to the defendant provided it is done in a manner according to the precedents in similar cases.

(g) The judge in determining the punishment to be inflicted should think what nature would inflict in this particular case, if it were the judge. In other words, punishment should be natural, reasonable, and proportionate to crimes. When a doubtful case permits a choice between two grades of punishment, the lighter one is to be preferred; when it allows a choice between two forms of remission, the higher one is to be granted.

(2) Procedure. When in any important case the preliminary process of trial has been gone through with and the verdict given, the clerk of the district where the trial was held reports the case to the district magistrate, who in turn transmits it to the minister of justice. After having carefully examined the case and found it regularly and justly conducted the minister reports it to the king, who upon receiving the report deposes the three councillors to make a review of it. It is only after the approval of the report by the councillors and three searches being made for any extenuating circumstances that the

punishment is decided upon. But once decided upon the punishment, however light it may be, can never be remitted.

(3) Capital punishment.

The following are some of the categories of crimes for which capital punishment is inflicted.

(a) The introduction of a different language, any attempt to overthrow the existing laws, the change of names officially fixed, the modification of the established institutions to throw the administration into disorder, and the practice of superstitious cults.

(b) The introduction of unnatural music, strange costumes, unrecognized arts, and unrecognized instruments to mislead the people.

(c) To mislead the people by conducting oneself hypocritically but consistently, teaching false doctrines set forth with eloquence and logic, and preaching theories clearly wrong but supported with extensive knowledge.

(d) To mislead the people by means of fabricated revelations from gods or spirits or by means of false theories concerning the portentous influence of certain seasons or days or by means of divination or prognostication.

To one who commits a crime belonging to any one of these categories no consideration of extenuating circumstances is given.

(4) Prohibitions. The minister of justice being also invested with what may be called police power now-a-days, enforces the law which prohibits the sale of the following articles:

(a) Badges of distinction in gold or precious stones, robes or chariots granted by the king, vessels used in the ancestral temple, animals dedicated for sacrifice, and weapons of war.

(b) Utensils, tools, implements, or chariots not made according to the standards; cloth or silk not of the qualities or of the widths or lengths or of the colors as prescribed by the government.

(c) Grain not in season, fruits not yet ripe; trees cut down prematurely; and birds, animals, and fish not yet fully grown.

On the frontiers officers are stationed to examine the people entering or leaving the country, to prohibit according to the law the persons wearing foreign costumes from coming in, and keep a record of those who speak foreign languages.

f. The Winter Department. The head of the Winter Department is called the minister of works, whose function it is to assign appropriate places for habitation to the four classes of people, namely, the scholars, farmers, mechanics and merchants, give them proper occupations, and employ and superintend the men engaged on public works.

To select a certain locality for habitation and settlement, he first determines its area, ascertains its topographic and climatic conditions, and notes its distances from the neighboring towns and cities. Having found that each of these conditions is favorable for the purpose, he proceeds to assemble workmen to break ground, build walls, erect buildings and establish markets.

The functions expected to be performed, the service rendered, the occupations engaged in, and the arts learnt by the community of a certain locality must be in accordance with the topographic and climatic conditions of the place. The communities of the people inhabiting the regions of hot, cold, dry, and moist climates and those living in wide valleys and along large rivers naturally and necessarily have different customs, different temper-

aments, different tastes, different kinds of tools and implements, and different costumes. It is the duty of the minister to note and respect these different conditions. Instead of attempting to bend the local customs and temperaments into conformity with a uniform system of regulations arbitrarily thought out and devised by himself in his closet, he should preserve these differences provided that the points, which are, can be, and should be common, should never be allowed to be affected by any particularistic tendencies.

The ground is measured for planting a town, and the town is divided into what may be called wards for the residence of the people in such a manner that the size of the town and the manner of its division into wards shall be suited to the number, character and the nature of the occupation of the people, so that there will be no buildings left unoccupied, nor will there be people found wandering idle. Economical arrangement, especially the supply of food, is adjusted, and different work are given in different seasons with the view that the people may live in peace and contentment, enjoy their work, encourage and exhort one another to labor and respect their superiors—a condition necessary to the development of mental and moral culture.

In dealing with the people in respect to their habitations, temperaments and functions, the minister of works applies the great principles of morals and rights without attempting to change their manners, and subjects them to the same set of general laws without trying to alter their habits.

g. Annual report. At the end of an administrative year all the heads of the six departments with their retinues of principal subordinates respectfully present reports of the business transacted in their several depart-

ments during the past year. In these reports the excellences and shortcomings of the whole year's administration are carefully submitted by the division chiefs to the heads of the departments, who in turn submit them to the king through the prime minister who is the head of the Celestial Department. After having examined and approved the report the king issues orders releasing the aged men from public work and giving a feast throughout the country to the farmers, in which the officers representing the king thank them for their hard toil in the past year. With the close of the feast, closes the administrative year.

4. Royal grants.

a. Feudal creation. Among the 1,773 feudal states in the nine regions there are within the royal domain nine states of one hundred *li* square, twenty-one of seventy *li* square, sixty-three of fifty *li* square—in all ninety-three feudal states. The difference between the nature of the tenure of land granted within the royal domain and outside is that in the former case the tenure is only for life and the grantee has title to the annual produce of the land only, while in the latter the tenure is hereditary.

b. Badges of honor. A councillor as such is entitled to eight badges, and the next insignia, if granted, will be a dragon robe, the obtaining of which places him on a par in dignity with a royal prince. There is no minister under the king, however great a service he may have rendered to the country, who can have more than nine badges of honor. The prince of a middle feudal state has seven badges of honor, and that of a small feudal state, five.

c. Land granted to the farmers. All the land for the purpose of cultivation is divided into three kinds, namely, good, middle, and poor, determined according to its

situation, its distance from the farmer's home, and the character of the soil. Each kind is subdivided into the first class, the second class, and the third class. So altogether there are nine classes of land.

Only families, or, in other words, only married farmers, are capable of receiving land. For this purpose nine classes of families are legally recognized, beginning from one consisting of two members to one consisting of ten or more. Good land is granted to a family of more than seven members, the first class to that of ten or more members, the second to that of nine, and the third to that of eight. Middle land is granted to a family of from seven to five members inclusive, the first class to that of seven, the second to that of six, and the third to that of five. Poor land is granted to a family of from four to two members inclusive, the first class to that of four, the second class to that of three, and the third class to that of two.

d. Appointments to offices and commissions. A man before being appointed to an office or commission is subject to an examination into his character, conduct, intelligence, and ability. Upon satisfying the examiners in these respects he is put on probation for a period to be determined. It is only after having passed the probation with success that he is given a rank and appointed to an office with the emolument attached thereto. The ceremony of appointment is performed in the court in the presence of all the officers with a view to preventing favoritism and nepotism on the part of the appointing officers, and to making the responsibility of the incumbency felt on the part of the appointee.

5. Public service.

a. Personal service. The compensation required from the farmers for the land granted them for cultivation is,

besides rent, military service in time of war and labor in time of peace. In a family of seven members, three should render or be ready to render service; in two families each having six members, five; and in that of five, two.

In time of war not more than one should be drawn for actual service from each family, and the rest available constitute the reserve. But in hunting and repelling invaders all should turn out.

At the end of every year a new census is made registering anew the number of the members of each family and noting the number of those available for actual public service. The urban inhabitants of from twenty to sixty years of age and the country inhabitants of from fifteen to sixty-five are under compulsory service. Those who are exempt from the service are the noble, the recognized wise, the recognized able, the officers, the old men beyond the age limits and the defective.

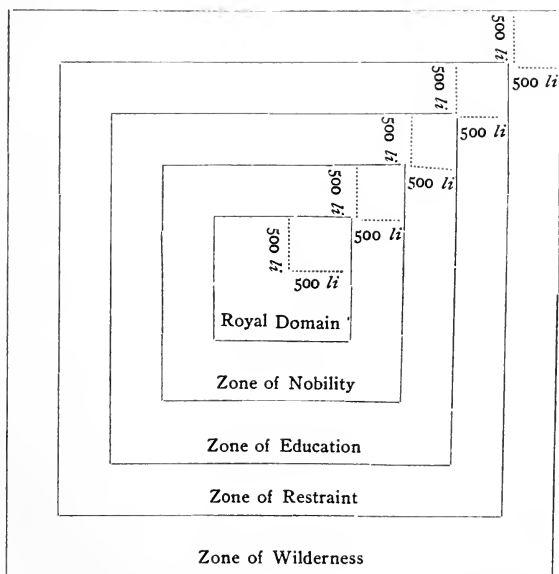
In every three years a general examination is held selecting from among the rank and file of the people men of virtue and ability. When the examination is over the selected men are given a feast by the officers and presented for recognition to the admiring people. In the following morning they are recommended to the king.

b. Zones of service.

Yu (2205-2198 B. C. reigning), the founder of the Hsia dynasty (2205-1766 B. C.) divided the country into nine regions according to their geographical situations and into five zones of service for political purposes. In the Chau dynasty (1122-256 B. C.), as a result of the extension of the territory, five more zones were added.

It has been supposed by some scholars that the zone-system as shown in the following diagram was an ideal mapping-out of the country in the mind of Yu, while in actual practice the zones could not be so regular and

uniform as represented. Ku Yenwu, a scholar living in the beginning of the present dynasty (1644 A. D.) suggested that an ancient *li* was equal to 31-50ths of a modern *li*.



The 500 *li* from the centre to the limits constitute the royal domain. From the first 100 *li* the revenue consists of entire plants of the rent grain (one-tenth of the produce); from the second 100 *li*, ears only; from the third 100 *li*, straw with other kinds of service; from the fourth 100 *li*, grain not thrashed; and from the fifth 100 *li* grain clear.

The five hundred *li* immediately beyond the royal do-

main constitute the zone of nobility. The inner one hundred *li* are devoted to the creation of feudal states for the first three classes of nobles, the next two hundred *li* are for those of the last two classes, and the outer two hundred *li* are for those of the princes below the rank of baron. From all of them due tributes are paid annually.

The five hundred *li* beyond the zone of nobility constitutes the zone of education. The revenue from the inner three hundred *li* is devoted to education, and that from the outer two hundred *li* is for military defence.

The five hundred *li* beyond the zone of education constitute the zone of restraint. The inner three hundred *li* are for barbarians and the outer two hundred *li* for exiles.

The five hundred *li* beyond the zone of restraint constitute the zone of wilderness. The inner three hundred *li* are for savages and the outer two hundred *li* for incorrigible criminals.

6. Means of nationalization and consolidation. In this feudal system of political organization from the very nature of the situation only the royal domain is under the immediate and exclusive jurisdiction of the central government, while all the feudal states with the attached territories are only partially subject to it under the following conditions:—

a. Since it is the king ultimately from whom the tenure of the land is derived by a prince, the king can theoretically eject the tenant at any time.

b. In the time of sending an expedition to subdue any barbarian tribe troubling the frontiers, or to subdue to submission a feudal state manifesting resistance to the central government, any prince should at the summons of the king put himself with his contingent under the royal

service; and in time of peace he should bring up or send up his annual tribute.

But as a matter of fact since the tenure is hereditary and the grant has been usually held by a prince's family for many generations, it is questionable whether in his daily conduct of business the fact that he is a mere tenant of the king ever enters into his consideration or even consciousness; and on the other hand unless there be sufficient cause the king will never exercise the power of revoking the grant. Furthermore, the royal jurisdiction extends over a large area, the people within the different feudal states are of different natures and temperaments, the military aids in the time of danger and the tributes in the time of peace are rendered more out of fear than out of the sense of duty, and the princes are only too glad to increase their power and territory, whenever they are allowed a chance. Thus, the disintegrating and centrifugal tendencies have again and again appeared to be stronger than the cohesive force.

To counteract these tendencies and to bring all the feudal states into subordination and subserviency to the central government, several means are devised:

a. Appointment of ministers to the government of a feudal state. As mentioned above, all the three ministers of the prince of a large state, two ministers of a middle state, and both of the ministers of a small state are appointed by the king. The results expected to be obtained through this arrangement are: that the ministers will be instrumental in bringing the administration and policy of the feudal state to which they have been appointed into conformity with those of the central government so far as general principles are concerned; that their presence will exert a moral influence upon the prince in his attitude toward the king; and that they

will keep the central government informed of the general state of affairs in that feudal state.

b. Permanent royal commissioners. All the feudal states beyond the royal domain are divided into groups of five, each of which is called a "union" and supervised by a "senior"; the "unions" are again divided into groups of two, each of which is called an "alliance" and is supervised by a "president"; the "alliances" are again divided into groups of three, each of which is called a "confederation" and is supervised by a "director"; and the confederations are again divided into groups of seven each of which is called a "region" and is supervised by a "governor." There are eight "regions" altogether, over which there are 336 "seniors," 68 "presidents," 56 "directors," and 8 "governors." Superimposed upon this hierarchical structure there are two royal councillors called "viceroys," one controlling the eastern half and the other the western half of the kingdom.

c. Temporary royal commissioners. Occasionally the king sends his officers as inspectors to the different "regions" not to examine the government of the princes but to inquire whether the permanent commissioners of the central government are faithfully performing their duties. Usually three inspectors are sent to each "region."

d. Formal homage due to the king from the feudal prince. In time of tranquillity there should be on the part of a prince a "minor homage" every year, which consists in delegating an officer to the capital to convey his homage to the king, "great homage" every three years, which consists in delegating a minister to do the same, and a personal interview every five years. During the interview questions on morals, law, education, administration, etc., which the prince and his ministers,

officers, and scholars have discussed but not been able to decide, are brought up for consideration and final decision by the king, so that a uniformity in these matters may be secured throughout the kingdom.

Whenever military service is necessary a prince must come at any time without delay to the capital or the place designated by the king. To show that resort to arms is the last means for preserving the peace of the kingdom, and is not for the purpose of satisfying his personal ambition but of discharging a duty laid upon him by high powers, the king on the point of starting on a punitive expedition offers prayers to the Supreme Being and the Spirits of Territory and Grain, takes leave of his deceased ancestors in the temple, resolves upon a certain plan in the military college, and asks the army-priest to pray for the soldiers. When the object has been accomplished, several captives, on his return, are brought back and presented in the ancestral temple as an evidence of his having faithfully executed the duty devolved on him.

No feudal state may take up arms against another on the ground that the latter has committed what is prohibited to it or omitted what is enjoined upon it by the king or the central government without having previously received the royal bow and arrow signifying that its action is merely the execution of a royal order. Nor on the same ground can a prince put any other to death without having been given the commission to that effect evidenced by the temporary possession of the royal battle-axe.

e. Royal tours of inspection. The king makes a tour to all the feudal states every five years. In the second month of the touring year he inspects the eastern feudal states and has his temporary court held on the eastern

mountains. After having burnt a pile of wood to Heaven to announce his arrival, he first, grants an audience with all the feudal princes in this quarter; second, gives a reception to all the old men of a hundred years or more; third, asks the chief instructor to present to him the local odes, ballads, and idylls in order that he may learn the customs, manners, habits, and the temperaments of the people; fourth, orders the superintendent of markets to bring up all kinds of articles bought and sold in order to ascertain their likes, dislikes, tastes and predilections; and fifth and last, tells the censor to investigate whether the civil seasons, months and days, and the music, morals, standards, weights, measures, sizes, and costumes, as decided by the central government, have been observed by the people.

If it is found that a prince has not attended to the worship of the Spirits of Territory and Grain, he is held to be irreligious, and therefore he will be deprived of a part of his territory. If one is found negligent of ancestral worship, he is held to be unfilial and consequently he will be reduced in rank. In case one is discovered to have changed the established music and morals, he is pronounced disobedient, and will be forthwith banished to a distant region; and in case one has altered or attempted to alter the weights, measures, sizes and costume, he is a rebel and will incur capital punishment. On the other hand, if any one is found to have worked for the welfare of the people, he will be rewarded by promotion in rank and addition to his territory.

In the fifth month the king goes to the south; in the eighth month, to the west; and in the eleventh, to the north: in every one of these places he performs the same ceremony and in the manner as in the east.

7. Hunting. In time of tranquillity both the king and

a prince have three huntings a year, the purpose of which is not for pleasure but to obtain food for worship, for entertaining guests and visitors and for the supply of the royal store.

It is considered irreverent to the Supreme Being and disrespectful to guests not to hunt in time of peace, but it is cruelty if the hunting is not carried on in accordance with the rules specially provided therefor. Hence the king will not order the hunting ground entirely surrounded, and a prince shall not take a whole herd of animals by surprise. The large flag flying over a hunting ground is lowered after the king has enjoyed his prerogative; the small flag lowered when the prince has had his turn; and it is only after the light vehicles of the officers of the state used for driving and keeping the game have been housed, indicating that they have enjoyed their privilege, that the people can hunt in the field.

The people are prohibited to fish until after the middle of the tenth month, to hunt until after the ninth, to catch birds with nets until after the eighth, to cut down trees or plants until they have shed their leaves, and to set fire to the fields before insects have withdrawn to their holes for the winter. They are forbidden to take fawns or eggs, to kill pregnant animals or those having not yet attained to full growth, and to throw down birds' nests.

8. Pensions and privileges to the aged. There are four classes of people who are entitled to the government pension, namely, first, the descendants of dethroned kings; second, the parents of the soldiers who have sacrificed their lives for their country on the battle-field; third, those who have for a long time successfully and faithfully discharged their duty and performed their service to the country; and fourth and last, those who among the common people have arrived at the pension age as determined by the government.

A man at fifty years of age is supported through the primary school of his district; he is permitted to take food finer in quality than that taken by younger men, for by this time his health begins to decline; he is allowed to use a staff at home, and is exempt from public service requiring physical strength, such as building walls or constructing roads; and finally he is given an officer's rank if he is found worthy of it.

At sixty he is supported through the high school, permitted to use a staff in his district, and exempt from military service.

At seventy he is supported through the college of his feudal state or the University of the royal domain, permitted to use a staff in his state, exempt from visiting or receiving guests, and free from attending the court if he is an officer or a scholar.

At eighty he is allowed to use his staff at the court, is not compelled to perform the ceremony of mourning, and is allowed to have one of his sons, if he has more than one, always exempt from public service in order to serve him.

At ninety he is free from personally going to the king or the prince when his opinion on the state affairs is required, is allowed to delegate a member of his family to receive his emolument from the government, and is permitted to have all of his sons, if he has any, exempt from ordinary public service.

9. Charitable provisions. The orphans, "solitaries" (childless men or women), widowers, and widows are the four classes of people entitled to sympathy and compassion, and are therefore specially provided for by the government.

The blind, the deaf, the defective, the dwarfs, and the various classes of laborers (below the pension age) are all fed and clothed according to their capacities and the results of their labor.

10. Regulations and advices on traffic. On the roads males walk by the right, females by the left, and carriages keep in the middle. In walking with a man of almost his father's age one will follow behind, with a man of almost his elder brother's age he will take a position slightly behind, and with a man of almost his own age he will walk abreast. When two men are carrying a burden on the road the younger will carry both of the burdens if they are light, and if he is not able to do so he will carry the heavier one. At any rate a man with grey hair should not be suffered to carry anything on the road.

III. METHOD OF MAINTAINING THE FEUDAL SYSTEM

The feudal system is a grand one: over the lowest stratum of people are scholars, over scholars are officers, over officers are ministers, over ministers are princes, and over princes is the king. Besides the feudal hierarchy there is a hierarchy of royal officers, of which the feudal functionaries form the basis; over these functionaries are seniors, over seniors are presidents, over presidents are directors, over directors are governors, over governors are viceroys, and over viceroys is the same person—the king. Thus the king, at the head of both of the hierarchies, commands, prohibits, and directs the millions of people. The moment the will of the king is expressed at the top, it is conveyed with great speed through the intermediate officers to the people, with the result that uniformity in law and administration are secured, efficiency is obtained, and any governmental policy is carried out with ease.

The means by which these two hierarchies are maintained are three, namely, morals, status, and badges of honor. All through the ceremonies performed at conferring the hat,¹

¹ A ceremony performed in ancient times to signify the legal transition of a man from minority to majority at the age of twenty.

marriage, visits and inquiries,¹ mourning, burial, and worship is clearly discernible the element of hierarchical distinctions, *e. g.* the ancestral temple of the king consists of seven compartments; that of a prince, five; that of an officer, three; that of a scholar, one; and a common person worships at the main hall of his house.

The conception of status is that in the State² there are the political positions of the king, the prince, the minister, the officer, the scholar, and the common person, existing in spite of the absence of their occupants, just as houses may exist without their inmates. A prince is bound to obey the king, not necessarily because of any moral, intellectual or physical superiority in the latter, but because of the conception that the status of the king is above that of a prince, and so on.

A badge of distinction is simply the symbol of hierarchical superiority or inferiority. Its chief importance lies in the fact that it may be used as a means of discipline to keep up the hierarchical systems in efficiency, and also as an indicator whereby to ascertain their conditions at any time. It is just as demoralizing for one to relinquish the right of using the badge properly belonging to him as to usurp one which can only be used by a superior. One may be assured that the system is in a high state of efficiency, when neither usurpation nor abandonment of rank is found to exist.

FALL OF THE FEUDAL SYSTEM³ (893-221 B. C.)

By the time the feudal system was approaching its climax it is probable there were men who thought that the govern-

¹ Visits and inquiries after general prosperity from the princes to the king or among the princes themselves.

² This word is capitalized in order to distinguish the political State from a feudal state.

³ From 1122 to 893 B. C., *i. e.* from the beginning of the Chau

mental organization had reached its goal, and from that time onward the people would enjoy perpetual peace, order and happiness. But very soon it proved to be an illusion. Soon after the feudal system had become perfected, disorganization and demoralization began their course; and what was the most unexpected was that the very means, methods, and systems, which had been maintaining the magnificent feudal structure, turned out to be disrupting forces. What was more secure against the neighboring barbarians, who were the only disturbers of peace at that time, than the royal domain surrounded as it was by the zones of protection? But now many feudal princes began to grow in power by annexing small feudal states and conquering barbarian tribes, while the royal domain remained the same as it had been since the establishment of the system. Furthermore, the kings began to degenerate because they were denied a broad and healthful education and habituated to court effeminacy and indulgence. They could not see beyond their small horizon and would willingly give up anything if they could be left alone with their royal domain.

The grand hierarchical arrangement also proved a detriment to the royal power, for in such an arrangement, when one section between the king and the people broke away, those under that section would be swept away also. Now in the period of general disintegration, when the powerful feudal princes set themselves against the king and bade defiance to royal orders, the ministers, officers, scholars and people under them were by the nature of things thrown into opposition to the head of the hierarchy.

The condition of the king in the period from 897 to 256

dynasty to the year when Yi Wang descended to the Hall to receive the princes, feudalism was at its height. In the period of from 893 to 481 B. C. disintegration was in process. From 481 to 221 B. C. feudal states virtually became independent nations.

B. C. was indeed pathetic. According to what may be called the feudal constitution, all the vassals or their representatives should every year come to the national capital to pay homage to the suzerain, and the ceremony thereof should be conducted in full solemnity and with punctilious respectfulness, the king standing on the dais of the hall, facing south, and his councillors and his vassals standing at the lower end of the hall (the former facing east and the latter west). But now the king descended to the hall and stood on the same level with his councillors and vassals!

Contributions and tributes were discontinued and service ceased to be rendered. Now when the king or the queen died and the burial required appropriate expenditure, for which it was the duty of the princes to provide on receiving due notice, a minister was sent around pitifully to beg for assistance. On the other hand, when a duchess or a marchioness died, the king, always on the look-out for an opportunity to please any powerful prince, lost no time in dispatching a high minister to bear his funeral presents therefor, and in his eagerness to ingratiate himself with his vassals, he often acted in a manner incompatible with his dignity and made gifts not in accordance with the rules.

The removal of the national capital from the west to the east¹ was a naïve confession of the helplessness of the royal house, and sent the feudal hierarchy to speedy destruction. Thitherto many feudal states had been curbed from acts of insubordination and violence by the prestige of the king's high office, and powerful subjects had been kept within bounds of decorum by the long-continued usages. But the change of the site of government destroyed all historical

¹ The removal of the national capital being from Hau near the modern Si-an-fu of the Shensi province to Lo, the modern Loyang of the Honan province in the year 769 B. C., the first year of the reign of Ping Wang of the Chau dynasty.

associations, revealed the real condition of the reigning family in its full light, and dissipated in the minds of the powerful princes any fear of a punitive expedition. From this time on the relation between the suzerain and the vassals excited pathos and humor at the same time—weakness, unbecoming condescension, solicitude to please on one side; indifference, insult, supercilious haughtiness on the other. Indeed, the king once tried to assert his authority by deposing one of his vassals on account of his disobedience to his order and putting another man in his place, but this action only exposed his impotency, for, soon afterward his creature was driven away by some powerful princes and the troop sent by the king to suppress the flagrant and direct insubordination failed ignominiously.

CHAPTER III

PUBLIC LAW ¹

I. LIFE AND WORKS OF CONFUCIUS

It was during the period of dissolution as described in the close of the preceding chapter that Confucius made his appearance. Born in the north where climate and environment favored active life and vigorous thinking and being

¹ Properly, this chapter on Public Law or, to be more accurate, Principles of Public Law, should be made a part of the preceding chapter, inasmuch as it deals with the public law of the feudal period. Its title to a separate division is justified by the fact that a large part of it has continued to be the public law in China ever since. Even in the present day, in documents or discussions on political questions its principles have again and again been quoted as authoritative.

The book on Public Law is called *The Spring and Autumn*, a history of 242 years of the feudal state of Lu, written or revised by Confucius. This law was not originated but restated as existing facts by him in hope that it might be observed by the rulers. Again, the law was not written as such in the book but concealed under historic records of laconic sentences or phrases, susceptible of double interpretation, the peculiar positions of words, striking omissions of titles, and the employment of unusual terms to denote certain events, etc. Three commentaries on it have been generally used, and the one used here is that written by Kung-yang, who learned the law from Tse-hsia (born 507 B. C.), a disciple of Confucius.

It is true that the change of conditions necessitated the change of public law, and so that part of the law which was good in respect to the feudal system passed away with the system, *e. g.* that which governed the relation between the king and the prince and the relation between one prince and another, etc. But it is also true that that part which governed those relations which have continued to exist to the present day has remained unchanged, *e. g.* that which has governed succession, accession, etc.

earnest in nature, he was wonderfully struck by the chaos and decadence that had been prevailing throughout the State. Accordingly he made it his object to restore the governmental system to its former position by elevating the royal power and suppressing the insolent and turbulent princes. He did not attempt to devise a new political system but rather to revive the one supposed to have been devised by the preceding sages—men endowed with pre-eminent wisdom, to whose absence Confucius attributed “the wandering away of the world from the right path.” His purpose was not to create a new sun for the people but to remove the shrouding clouds from the existing one, so that everybody might once more enjoy its glorious radiance.

A. His Political Life.

Confucius started his active political career as the magistrate of a small district in the state of Lu, in the modern province of Shangtung, where he was born. By sheer merit and unremitting diligence he was gradually promoted to the position of the Minister of Public Works, and later to that of the Minister of Justice, and was even called temporarily to serve as the Premier in his native state. During his administration he came very near realizing his political ideal. While liberally rewarding and encouraging the good, he hunted down the criminal element of the community with no mercy, with the result that those people who had hitherto by illegal means gained their fortunes found their position so unpleasant that they were obliged to remove to some neighboring state. This sign of progress excited the jealousy of the prince of another large state, who, seeking to prevent the plan of Confucius from being carried to fruition, and well knowing the frivolous disposition of the prince under whom Confucius was serving, sent him eighty young, pretty, dancing girls. The prince, immediately falling into the snare set for him, did not for three days attend

his public affairs in spite of the earnest expostulations by his minister. Confucius, finding no opportunity for him to carry out successfully his design, resigned his office, and made trips to the other feudal states in hope of meeting some prince who was able to sympathize with him and would willingly give him a free hand within his jurisdiction in carrying out his well-planned scheme; but to his disappointment he was either not received at all or treated with coolness.

B. His Literary Works.

In despair he fell back upon the other means, namely, preaching and writing. Soon he drew around himself a group of young men of promising talents and taught them his doctrines and theories, with a view that his scholars might become the instruments for transmitting his principles to the intellectual aristocracy in the different feudal states so that some day they might be put into practice. Thus, in the midst of gloom and sadness a ray of hope still illumined the vigorous mind of the northern philosopher, and throughout all his works a vein of optimism is clearly perceptible. His disciples, with respect and reverence approaching to worship, looked upon their master as the incarnation of wisdom and cherished with deep piety every word of instruction and advice that fell from his lips.

But of far more importance to China than his preaching and teaching is his editing and writing of books. He wrote a commentary on the mysterious and enigmatic work called the *Book of Changes*; revised the rites and ceremonial usages; arranged the historical and documentary records of the preceding dynasties, and recompiled the ballads and odes of different localities—all tending to bring out the necessity for the existence of kingship, the importance of observing the code of morals which defined the status of the different classes of people, and consequently the implication

that the encroachment by the princes upon the power of the king was abnormal and therefore should be prevented. However, clothed as the books were with the garb of authority (for they were the records of the times prior to the birth of Confucius), they do not seem to have produced the desired results.

To effect his object, Confucius resolved upon writing one himself to set forth clearly the relations between the king and a prince, between one prince and another, between a prince and any of the classes under him, the nature and character of kingship, the conditions of succession and accession, and those of deposition, in other words, the principles of public law. It is possible that at first he intended to formulate the legal principles prevailing when reason had its sway but a second thought told him that mere rules in the abstract would never command a hearing on the part of the haughty princes in that age of turbulence. "A principle," ⁷ to quote his own words, "will strike the minds of the people with greater and more effective force when embodied in the past events than when stated in their abstract." Furthermore, having noticed the general lack of interest among the people in the events long past, he selected to serve his purpose only the political facts within the memory of his contemporaries, and those which had been handed down to his generation and esteemed as things modern, and therefore would be listened to with more interest. The portion of the history of his own feudal state immediately before and contemporary with his time, covering a period of two hundred and forty-two years, was bristling with assassinations, murders, intrigues, acts of disobedience and violence, and therefore was regarded by the author as embracing all the phases of human activity in the political sphere, and sufficient to bear out the doctrines which he set himself to inculcate.

It should be noted that he, solicitous not to excite the surprise of the people or to create an unfavorable attitude toward his work, did not attempt to write a history in an independent method, but, careful to introduce his intended principles under the cover of the old form, adopted the style and oftentimes the very wording of the state historiographer. Therefore he said, "The events mentioned in my work are principally those of the ruling princes, the style is that of the historiographer, but the principles contained therein are mine."

During the period of feudalism the system of morals and the hierarchical arrangement penetrated into every nook and corner of the political organization, and historiography was no exception to the rule. In accordance with the political status and the rank in dignity of the person under consideration, different terms were employed to express the same effect, *e. g.* the death of the king was recorded in the phrase, "breaking asunder of the mountain," that of a prince or of an officer in "coming to an end," and that of a scholar in "cessation of emolument." For the same reason some facts were mentioned in one case and not in another, *e. g.* dates were specified in recording an act of a prince and months only were noted in recording the deeds of the king. It was in such points that Confucius made alterations in the annals as recorded by the state historiographers and it was precisely here that he introduced his principles. By omitting or allowing to remain the title of a prince or of an officer, specification or non-specification of dates, the employment of the term "assassination" or the term "killing," the striking out of certain events which had been recorded in the state annals, etc., he virtually exercised a power superior to that exercised by the king. It was just as if some one should go through the records of a court of law and so change the wording as to reverse the

actual decisions and make the opposite principles authoritative for succeeding generations. Hence it has been said that "at the stroke of the pen of Confucius the usurpers and criminals trembled and cowered to the ground." And it was the exercise of this power that won him at a later date the title of the "unseparated king."

In writing on the facts and practical questions of his own day he found himself confronted with problems which hitherto might not have entered his consideration. At once he discarded the attitude of the closet philosopher. Indeed, he still persisted in attempting to bend the world in conformity with the standard set up by himself, but now not by the means which if applied to the political organization would defeat the very purpose he had in mind. When he found that the main current ran counter to what he had expected he did not give up to despair and abandon his scheme, but studied the situation and modified his method so as to bring about the desired end gradually.

Confucius recognized three stages of a political organization: the first was perfect peace where the king reigned but did not govern, the people did not close their doors at night, and any article dropped on the road was not disturbed; the second was inferior tranquillity, where the king had to govern, *i. e.* to give commands and to compel the subjects to obey the commands under pain of punishment; and the third was chaos where the organization fell into pieces, every inferior class usurped the place of the superior, and strife and conflict ran riot. The period in which Confucius lived was one of the last stage, and it was to bring peace and order out of chaos that he wrote the memorable history. "The world was degenerating," said Mencius, his follower, "reason vanished from sight. Heresies and abnormal actions were prevalent, and cases of regicide and patricide occurred again and again. Confucius, shocked

at seeing the chaos and wishing to prevent further enormities, proceeded to write a history. Before his time there were two great human achievements, namely, the drainage of swamps and the subjugation of the barbarous and ferocious animals. Now Confucius contributed the third." This immortal work is called *The Spring and Autumn*, at the mention of which a guilty magistrate of even the twentieth century will turn pale.

II. IMPORTANT PRINCIPLES OF PUBLIC LAW CONTAINED IN THE SPRING AND AUTUMN

A. Law should be in conformity with Nature.

The genesis of the cosmos determines nature, and nature orders all forms of existence to be and to act in conformity with itself on penalty of annihilation.

B. The State.

1. *Its elements, symbols and rules.* A group of persons inhabiting a certain portion of the earth to maintain and improve their being must organize themselves politically, *i. e.* form a State. The elements of a State are therefore a territory and a people politically organized. Its symbols are the altars to the Spirits of Territory and Grain, the Ancestral Temple, and the Court. For the purpose of administration it has one and only one system of morals and education, one and only one civil calendar, one and only one system of standards, weights, measures, sizes, and costumes.

2. *Admission of new feudal states.* The surrounding barbarian tribes are subject to a different kind of government but may be admitted to the Middle Kingdom (China) provided they have sufficiently assimilated the civilization, *i. e.* the morals and education; and promised to hold periodical audiences with the king, exchange visits with the princes of the other feudal states, and comply with the administra-

tive regulations, *i. e.* the standards, weights, measures, sizes, and costumes.

In creating a feudal state the king will always require the prince to build the altars to the Spirits of Territory and Grain, the Ancestral Temple and the Court in the centre of his feudal state, so that civilization may emanate evenly, and the tributes and taxes brought to the government may be equal. In locating the capital two other points should always be kept in consideration, *viz.*, convenience to the people and security from foreign attack, of which the former is allowed to take precedence.

3. *Conditions of the extinction of a feudal state.* The king may at any time dissolve a feudal state as he sees fit. But this power is not to be exercised unless as a last resort.

The existence of a feudal state comes to an end when the prince dies leaving no successor. In this case the feudal state may either be escheated to the king if it is large, or be allowed to be incorporated into one of its neighboring feudal states if it is small, subject to the condition that the possessor shall provide for the sacrifice at the ancestral temple of the territory annexed.

Again, a feudal state may come to an end when a large portion of its people for one reason or another have migrated to other places. There was a case recorded of a feudal state which met with such a fate. The prince made a law to the effect that when any member of a family committed a crime four of the other members would also be responsible for it. It was not long before very few persons were left untouched by the law. Consequently the people removed to the neighboring places, with the result that the feudal state died a natural death. This is called extinction by the "fish-decaying process."

4. *Appointment of the head of the State.* Political organization implies division and differentiation of functions,

just as the division and differentiation of the bodies of the universe or the parts of the human body. The most important function is that of directing the people within and that of communicating with a similar organization or organizations without. This function is called kingship and the functionary, king. As there is only one sun to the sky and one head to the body, so there can be only one king to a political organization. But who in the group should discharge this function, *i. e.* the function of directing the people at home and communicating with a similar organization or organizations abroad? The traditional doctrine is that this decision is made by Heaven—illustrious virtues, mental abilities, and physical strength possessed by a certain man together with the acknowledgment of the same by the people being the evidences of the divine decision in his favor.

5. *Succession.*

a. *Primogeniture.* On the theory that blood carries moral, mental and physical qualities, on the observation that a man brought up under the care and education of the king has a better chance than an average man to be fitted to discharge the functions of the head of the State, and on the experience that the absence of provisions for the succession often entails disaster to the country, the son, if there is only one, of the reigning king is to succeed upon the demise of the latter. If there is more than one son, the first shall be the successor.

b. *No woman as the head of the State.* No princess has ever been declared to be the successor, and a woman as the ruler has no place in public law.

c. *Collateral succession.* Direct lineal succession and primogeniture are adopted to make it certain, definite, and publicly known who is to be the next ruler upon the “breaking asunder of the mountain,” with a view to preventing violence and bloodshed necessarily arising in the struggle

for the throne in default of such rules. To determine the right or wrong of a public question the welfare of the State is to be taken as the criterion, and therefore it is possible that a brother of a reigning king may be made the successor. The principles of public law permit it when in the opinion and contemplation of the king the application of the usual rule, *i. e.* to have his son succeed him, will work harm to the country. The relation which the successor bears to the predecessor is not the same as that which the son bears to the father. That a child of the reigning king should have preference to any other, and the first son preference to the other sons in the matter of succession, is evolved out of theory and experience as mentioned above. When the application of the rule threatens to defeat the very purpose for which it has been established, collateral succession instead of direct lineal succession is permitted. While the duty of the son is primarily toward the father, that of the successor is toward the people; the son and the successor may be the same person, and whenever the two duties are in antagonism the latter transcends the former, so much so that when a son has been nominated the heir he occupies a different status, for he has been partially lifted from private life to public life. The principles of public law show no mercy to a king who kills the heir-apparent, for he thereby not only kills his son but the future ruler of the people, and thus against the people he commits a political crime, and he is not brought to book simply because he is protected by kingship.

d. *Conditions that debar succession.* Such defects as dumbness, deafness, lameness and hump-backedness, horrible diseases and entire baldness disqualify any man from succession.

e. *Some other practices relating to succession in a feudal state.* Besides the principles stated above there are some practices which determine the succession in a feudal state.

(1) *Royal appointment.* Inasmuch as the king creates a prince, he may suspend, temporarily, the operation of the rules in a feudal state governing succession, and interpose his will so as to appoint some one other than the legal successor to a deceased prince.

(2) *Establishment by the people.* While it is within the competence of the king or the prince to appoint another than the legal successor to the throne or the principality, the people have no right to disturb the rules of succession. Perhaps this statement seems to stand in contradiction to one of the fundamental principles that the welfare of the State—the people politically organized—is taken as the basis for determining what is right or wrong with regard to any public question. But a moment's reflection will show that it is not the case. The state includes the government and the people and each has its own proper sphere. Neither should be allowed to encroach upon the sphere of the other. The appointment of a brother to be his successor by a king or prince, in spite of the presence of his son or sons, is within his power as the head of the state, whereas any intervention on the part of the people is an *ultra vires* act. In theory and occasionally in fact this discretion enjoyed by the king or the prince is liable to abuse but the exercise of this power by the people is far more liable to abuse and may lead to grave and interminable troubles. Thus *The Spring and Autumn* pronounces a prince established by the people as an intruder.

(3) *Entrance by force.* There are cases recorded where, at the death of a prince, one of his brothers or sons, who had hitherto sojourned in other places on account of political or family troubles at home, forces an entrance into the feudal state and seizes the seat regardless of the principles of succession. Any one who succeeds in attaining his object in this manner is also pronounced an intruder.

(4) *Imposition by another feudal state.* The ruling family of a feudal state is often connected with the ruling house of another state through marriage or in other ways. Naturally the prince of the latter house, in order to maintain a more intimate relation between the two or to possess some measure of influence over the former, will endeavor to put one of his relatives in power whenever a vacancy occurs, in spite of the principles of succession or the wish of the people. Moral weight will be readily brought to bear upon the situation, and armed forces may be put at the disposal of the contestant in order that he may effect his purpose. This is another species of intrusion, against which *The Spring and Autumn* makes a special protest, for it introduces into the feudal state foreign influence which will inevitably work against its independence in relation with the other feudal states and impair its authority within its jurisdiction. Moreover, it will furnish an ambitious and unscrupulous person with a pretext for carrying out his ulterior design. To prevent such dangers, it is laid down as a principle that when a son of a prince, who is opposed to accepting a vacant seat to which he is not entitled or is indifferent in the matter, is coerced into accepting the offer by the prince of another feudal state, he should resist it even at the cost of his life.

However, a prince who gained his power by any of those methods, intruder though he is, is nevertheless clothed with full authority, for he is a *de facto* ruler as soon as he has ascended to the seat; and therefore whatever he transacts during his administration is valid and binding upon the successor whosoever he may be.

The taking of the seat from the intruder by any one except the rightful successor will not be called restoration. By ousting an intruder, the newcomer is no less an intruder, and cannot justify his actions by alleging that he

only expels a man who has no right to the place. This principle is recognized not to strengthen the position of an intruder but to avoid serious troubles which are otherwise very likely to occur in the feudal state.

6. *Accession.* On the principle that the state cannot exist for one day without the sovereign succession takes place the moment the reigning ruler or the prince dies. The successor, who asserts his right by assuming the place of the chief mourner and director of the funeral ceremony, "ascends to the throne by the bier." An interregnum means the destruction of the state. But on the principle that there cannot be two kings in the same year the successor governs and administers in the name of the deceased ruler for the rest of the year in which the latter passed away. Out of grief, sorrow, honor, respect, and consideration for the dead king and father, the son defers for a time the assumption of the title; before the burial he is designated successor *so and so*, and after the burial, provided it takes place in the same year, he is designated successor. But on the principle that the reign of the late king ends with the close of the year the successor assumes the title at the opening of the next year in spite of the fact that the burial may not yet have taken place.

7. *Conditions of dethronement.* As noted above, certain defects and diseases will disqualify a son of a king or prince for succession. If any of these misfortunes befalls a king or prince during his reign he will probably be incapacitated for his position any longer.

The doctrine that "the king can do no wrong" applies only when he exercises his discretion and power within his competency. It is laid down as a principle that a ruler at the time of committing a felony forfeits his kingship or princely office.

8. *Relation of the king or prince to the ministers and*

people. Unless there are reasons to justify the contrary action, it is the first duty of a minister or a subject to protect and defend his king or prince, for the latter is the head of the political organization of which he himself is a part. By failing to protect and defend the head he fails to protect and defend the state and consequently himself.

If the prince is not legally and formally deprived of his power but forced out of his position by an intruder, he is still legally the prince to his ministers and people, and it is their duty, provided they have not acknowledged the authority of the intruder, to restore him to power.

When a minister is convinced that what the king or prince is doing or is going to do is wrong or against the rules of established customs, it is his duty to expostulate with the ruler with a view of preventing his proceeding. If the ruler persists in his own way, after having been expostulated with three times, the minister is considered to have discharged his duty and may resign his position. There are five methods of expostulation, namely, expostulation by hinting, by persuasion, by direct demonstration, by argumentation, and by mutilation or even suicide.

A son of the king or prince is a subject and a member of the family at the same time, and hence there is a double relation between the two. But the principle is that inside the house his conduct is to be governed by the rules of the family and outside by the ordinary political regulations.

The forcible removal of a minister or officer without the consent or approval of the king by another minister or officer on grounds, true or alleged, that the accused is corrupting the morals of the prince or working harm to the feudal state is declared to be an act of insubordination.

No prince can inflict on his minister, his officers, or his heir-apparent capital punishment without the consent and approval of the king. And no prince is allowed to enter business for profit in competition with his subjects.

9. *Principles and rules of custom governing the interstate relations.* There are three classes of states—large, middle and small—each having a peculiar status with its appropriate ceremonies at the time of holding audience with the king, in their exchange of visits and in their meetings.

Those meetings are variously known as :

a. *Agreement*—in which according to the ancient practices an animal is slain and each contracting party pledges before Heaven and Earth its adherence to the terms of the agreement on such pains as have been suffered by the animal.

b. *Alliance*—in which more than two parties take part and all solemnly agree to carry out the common object in the way that has been arrived at and decided upon by the parties.

c. *Understanding*—in which the object for which two or more princes meet is read out by a specially appointed person in the hearing of the parties, who then separately consent to act according to the understanding and depart without performing any of the formalities necessary to an agreement or an alliance.

d. *Ordinary meeting*—which denotes that the meeting takes place at the instance of another feudal state and that the prince goes out of his territory for that purpose; or that it is just an ordinary meeting whose object it is to cultivate the friendly relations already established.

e. *Renewal of agreement*—a meeting held as the name implies for the purpose of sustaining and strengthening the resolution of both parties to carry out some object upon which they have mutually pledged themselves. Such renewals usually take place on the accession of a new prince to power in either of the contracting feudal states, for it is customary for a new ruler formally to declare his intention that he will continue the work initiated by his predecessor.

f. *Peace*—a treaty of peace or an armistice, which takes

place at the end of a war or in the middle thereof, usually brought about by a third party but occasionally effected between the contestants.

g. *Unprepared meeting*—a name originally applied to the coming together of the princes after their audience with the king, but later it is employed to denote:

(1) The meeting of two or more princes without previous arrangement.

(2) An informal meeting between two or among several princes prior to a regular prearranged meeting.

(3) The meeting of persons from two or more feudal states who are incompetent or insufficient in power for a formal meeting of any kind.

Be it remembered that only such meetings between or among the princes are legal as are recognized by the rules of custom, such as, the exchange of visits to inquire after the health of a prince, the prosperity of the people, and the plentifulness of the harvest, or those which are initiated or permitted by the king at any time or on any emergency. Consequently many kinds of meetings enumerated above are without the sanction of the customary law.

10. *Sphere of freedom of a diplomatic representative and of a general.* An officer sent by one prince to another is incompetent to execute anything beyond the mission for which he is accredited, with the sole exception that if he sees there is a danger threatening the existence of his feudal state or the well-being of its people, he may exercise his discretion to avert this danger provided that such exercise in its nature admits of no delay and takes place without the boundary of his feudal state. It may become valid upon a subsequent approval of the prince. Such an exercise of discretion may imply a choice between two evils. If there ever be a case where a choice must be made between harm to the prince and that to the people the former is to be preferred, for the

latter is the basis of the political organization. Even if he cannot succeed in attaining his object he is to be excused, if it can be established that his act is really designed for the welfare of the people—the evidence for such establishment being his assumption of all the consequences of his act and his willingness to sacrifice his own life.

A general receives his order from the king, but in the disposition of the forces and operation in the field he has absolute power.

11. *War.* The king is the supreme political head and it is assumed that there is no territory which lies beyond his jurisdiction. He has no equal and therefore declares no war. What he need do, whenever a prince has failed to obey the law or does not comply with his order, or whenever a barbarian tribe comes to trouble the frontier, is, theoretically, to send a punitive expedition to bring the offender into conformity with the law, enforce his will, and suppress the disturbers of peace.

As a matter of fact, the kings during the decadence did not exercise their power, and they were wise in not doing so. Assassinations, princes paying to one another that homage due only to the king, the employment by princes of sacrificial ceremony in their temples which could only be used in the king's ancestral temple, the invasion and conquest of feudal states by stronger ones, the exchanges of portions of land by princes without the permission of the king, the attack and deposition of princes established by royal orders, and other acts in contravention of the law, ran rampant throughout the country.

✓ Here the author of *The Spring and Autumn* found himself on the horns of dilemma. Nothing would be more painful to him (as it must be to any man of a juristic temper) than to have to acknowledge the transfer of the powers of the king to some prince, though in fact they had been

snatched away or stolen from his hand long before, for such an acknowledgment would complete the breaking-up of the political system which he had been struggling to defend and preserve.

But stern facts were mightier than his pen. Whether it was acknowledged or not the situation was not a whit changed. The king was hopelessly sunk in feebleness and irresolution. Some princes, by absorbing the surrounding feudal states and usurping the royal rights and privileges, were in fact though not in name the supreme head, while the weaker feudal states eager to preserve their existence rushed to these mighty princes to pay them homage.

In despair the author adopted what is called "the mutual-cancellation-and-preponderance principle." To the extent that the hegemonical princes crushed assassins and murderers, restored legitimate but displaced princes to power, protected small states from being absorbed, assisted the weak, chastised the oppressors, and defended the various feudal states from barbarian invaders, they were meritorious; but in so far as they did all these and others in contravention of the law or in direct disobedience to royal orders, they were offenders. If the former exceeded the latter, they were to be praised; *vice versa*, they were to be censured. Later the protection of the weak, the repulsion of invaders, the chastisement of oppressors, the punishment of assassins and murderers, etc., were made the duties of a hegemonical prince. When he omitted to perform any of these he was severely censured, for he alone was capable of such performance.

12. *Important rules of war.* The possession of a political organization is necessary to a group of persons engaged in fighting in order for them to be recognized as a party to a war: otherwise they will be treated as marauders.

War is always for self-preservation and the defence of

the dignity and integrity of a feudal state, and so the infliction of a political injury is a just cause of war. Formerly a wrong done by one feudal state upon another was redressed by the king by sending a punitive expedition to the wrong-doer; now the royal power is paralyzed and the feudal states have to resort to self-help.

When a prince is murdered by another feudal state it is incumbent upon his successor to declare war against the offender in order to redress the grievance, on condition that he can count on a fair chance of success. Otherwise he must wait until an opportunity presents itself, there being no definite limit to the time of retaliation for a political injury suffered. The murder of a private person in another feudal state, not thereby affecting the dignity and integrity of the state, is not a sufficient cause for war. But a feudal state holding the hegemony may enter into war with one which has already conquered or is going to conquer a weaker member for the express or secret purpose of gratifying its unwarranted ambition.

Since the cause of war is political, any unnecessary killing of men is not permissible, and setting fire to fields is considered wantonness. So soon as the object for which the war has been undertaken is secured, acts of hostility should cease.

There are cases wherein some smaller or weaker states are cajoled or intimidated into joining a larger one in carrying out its illegitimate schemes. Here the followers as well as the leader are held responsible for any consequence of the joint act, and coercion or imposture is not admitted as an excuse.

13. *Different and successive stages of war.*

a. *Aggression.* Since the object of war is the redress of a political wrong, the rule is that the offensive party, as soon as it has arrived at the boundary of the defensive, should

state the injury it has suffered from the latter, show the justification of the war, and demand reparation.

b. *Invasion*. If the demand is refused then the attacking army may march into the territory of the enemy and an invasion is thus effected.

c. *Battle*. The next step is usually a battle between the two sides. If the defensive party triumphs the invader is repulsed; if not the former will withdraw into the city.

d. *Defeat*. It is a term used when either two princes or generals with power delegated from their princes are engaged in a battle and one is conquered by the other.

e. *Siege*. A siege of the city usually follows the defeat of the defensive party, and by cutting-off food-supply to the city the besieged are often forced to capitulate on terms dictated by the victorious invader.

f. *Entrance*. This is a term designating, first, that the act is done against the will of the people into whose territory the army enters; secondly, that a city of a feudal state is entered only but not retained; and thirdly, that only invasion or capture is implied without reference to any subsequent act.

g. *Capture*. A city or a place captured by the invading army is under martial law, but to its possession the invader has no legal title. The jurisdiction ceases as soon as its occupancy cannot be maintained by force.

h. *Removal*. As a result of the conquest the invading and successful army will have temporary control over the feudal state. If it has no ulterior motive than the redress of the wrong suffered, it may demand that the defeated feudal state remove its capital to a place where it will not be so easy and free as before to inflict injuries upon others.

j. *Some other rules*. Before commencing acts of hostility due notice should be given.

The killing of the prince of the feudal state invaded or

the occupation of a part of the territory is not considered the conquest of the feudal state. The symbols of a state are, as mentioned above, the altars for the Spirits of Territory and Grain, the Ancestral Temple and the Court, which the people should defend with their lives. If these are taken the feudal state passes into the *de facto* jurisdiction of the invader.

Concession obtained under duress can be retained only during the existence of some extraordinary and temporary circumstances, and the original condition will be restored upon the passing away of the circumstances.

C. *Supremacy of law.*

While the author of *The Spring and Autumn* was compelled to bend the law with great effort to suit the changed political conditions with the hope that thereby law might gradually resume its empire, he would not yield an inch in applying the law to any case where such application would not threaten the stability of the political foundation. Indeed, the central purpose of his immortal work was to make law supreme, so as to restore the king and the princes to their proper places. As is the case with every other nation, China, in her infancy, employed ethical virtues as standards to determine right and wrong. For several hundred years before the time of Confucius, law was being steadily brought to the front; but it was he who lifted it up to such a height that it virtually overshadowed ethics. Undoubtedly, no man was as earnest and energetic as he in urging the importance of ethical virtues, such as, affection toward parents, harmony between brother and brother, love between husband and wife, sincerity between friend and friend. But in the political organization the members of the body bear another relation to one another. It was so much the better if the demands of both these relations were compatible; but if they were conflicting, the demand of the

political relation was always allowed the precedence. The following three cases concerning the position of the prince will illustrate the point under consideration:

Case I. The prince of a certain feudal state had two sons, the elder possessing a great personality and strong character, but the younger being favored by the mother. Upon the death of the prince and the accession of the elder son, the mother asked him to carve out a district for his brother to govern. The new prince was well aware of the fact that the mother and the brother had conspired to dispossess him of his power, but he resolved to utilize their plan to get rid of his brother, and, consequently, in compliance with the mother's wish, appointed him to a large and important place. The ministers and officers, ignorant of the intention of the prince, were alarmed at the appointment and expostulated with him on the dangers of the step he had taken. He simply asked them, with a smile, to be patient. Soon the younger brother annexed two neighboring towns to his district, raised an army to attack the capital, notified his mother of the expected time of his arrival, and asked her to render him assistance. The prince was informed of this, and to forestall the movement sent an army to the district, whose people thereupon rebelled against the younger brother and forced him to flee to another feudal state.

In recording this episode the author writes: "The Count of Chen¹ defeated Tuan² at Yen.³"

From this record two implications are evident: First, the author ignored sentimentalism. It was the prince himself who passively encouraged his brother to commit the political crime by appointing him to a large district, conniving

¹ *Chen*, the name of a feudal state.

² *Tuan*, the name of the count's brother.

³ *Yen*, the name of a district in that state.

at the taking of the two neighboring towns, and allowing him to raise an army for attacking the capital. He did not stir until the crime had been well-nigh consummated. The author was alive to all these facts, but in point of law he could not enter into the working of a man's heart. Secondly, he ignored private relations by employing the word "defeated" and noting their names only.

Case II. The moral character and private life of a prince of one of the large states was so intolerable that he was hated by all the people. The only man who dared oppose him was Chau Tung, one of his officers. To get rid of this impediment in the way of self-indulgence, the prince once sent a ruffian to murder him; another time let loose a bloodhound on him; and a third time placed some soldiers behind the walls of the audience-court to assassinate him. But the officer escaped the danger every time. Thinking it unnecessary to subject his life to such jeopardy, he ran away from the feudal state. But before crossing the boundary one of his relatives, to carry out the wish of the people, killed the prince. He was recalled and was made to resume the office under the new prince.

But the entry made by Confucius is: "Chau Tung assassinated his prince."

Certainly the author understood that it was not the officer but his relative who assassinated the prince, and that relative committed the act to realize the popular wish. But here *The Spring and Autumn* pronounced the stern verdict of the jurist on the grounds:

1. When the king or a prince is assassinated irrespective of his moral character and private life, it is the first duty of every minister or officer to bring the assassin to justice.

2. The abandonment of the office does not result in his release from its duties, for it is not known to the prince.

3. In order that he may not be responsible for any act

done to his prince as the result of the abandonment of his office, that act must be committed after he has crossed the borders of the feudal state.

4. His immediate return in compliance with a call and the assumption of the office under the new prince establish his approval of the act of his relative.

Case III. A certain prince before his death summoned an officer to his bed-side and asked him whether, after his death, one of his brothers or his young son should succeed him. The officer firmly stood by principle and pronounced in favor of his son with no hesitation. Soon after he learnt that one of the two brothers was going to assassinate the prince. Fully armed, he met the would-be assassin on his way to carry out his object, and bade him swallow the drug he (the officer) was holding in his hand, which the would-be assassin did.

The Spring and Autumn approved this act on the ground that:

1. Proceeding directly to kill one's ruler or father with express intention and the ability to commit the act is assassination, even though the deed is not done on account of external intervention.

2. Whoever kills a man who is on the way to assassinate the ruler or murder his father merely kills an assassin or murderer.

After the death of the prince his young son became the successor. On the instigation of his uncle, the other brother of the late prince, a groom, who had been once whipped by the young prince on account of his improper conduct, assassinated the new ruler. The above-mentioned officer on his arrival found the act done and the groom executed. In spite of his knowledge of the real criminal he was silent.

Again *The Spring and Autumn* approved the attitude the officer took for the following reasons:

1. Mere knowledge of a man's guilt unsupported by allegation and proof is not sufficient to warrant the infliction of punishment.

2. The law that it is the duty of the officer to bring the assassin of his ruler to justice is satisfied in the execution of the groom.

CHAPTER IV

CENTRALIZATION, POPULAR REACTION, AND ABSOLUTISM (221 B. C.—)

I. CENTRALIZATION (221-209 B. C.)

A. Absorption of the Other States by the State of Chin.

Confucius failed not less ignominiously in his literary works than in his public life in attempting to restore the governmental structure to its former position so far as the immediate result was concerned, for directly following the period of the two hundred and forty-two years (722-480 B. C.) which his immortal work (*The Spring and Autumn*) covered, and which he regarded with pain and horror, political disorganization reached its height. Some powerful princes, not contented with the prerogatives already usurped, dropped the mask and openly assumed the title of "king", and not unnaturally the example set by the princes in their attitude toward their suzerain was faithfully and diligently copied by their own subordinates—the officers, who in turn were paid similar compliments by their subordinates—the domestics.

The occurrence of such extraordinary circumstances gave birth to some classes of people thitherto unknown to Chinese history. What a prince or rather a "king" was now afraid of was not a punitive expedition from the king but the absorption of his state by another, or the extension of territory or an increase in the wealth of another state. To maintain the existence of his state and to preserve the power he had

acquired, a prince was always on the look-out for men who could help him in accomplishing his objects. Demand creates supply. At once sprang into existence a class of scholars called the Orators, who were often employed by princes as delegates to different states to form alliances against any particular state which might have acquired so much power as to make it dangerous to the peace of the other states. Another class was the Tacticians who after *viginti annorum lucubrationes* in military manœuvres and strategy in some lonely mountain claimed to have mastered the secret of success in war. A third class was the Agriculturists who announced that they had so mastered the arts of cultivation that, in a time when a large number of men were drawn from the field to the army, agriculture could be carried on as before with the same if not better results.

In Europe in the Middle Ages scholars were often beggars, and even in England, at a later period in the fulness of her material prosperity, the lot of the scholar was often a poor one; but in China, in this early period, a scholar dared ask a prince: Who is more honorable—a prince or a scholar? And by giving an intimation that he would go over to a neighboring state he could almost bring the prince to his knees. All the princes vied with one another in throwing their doors wide open to any man who offered to do anything tending to maintain or increase the power of the state. A prince was not regarded as princely in character, if his "eating guests" could not be counted by thousands.

Perhaps the statement that Confucius failed to realize his object is true only to the extent that the existing royal family, in spite of his diligent preaching and terrible thunderbolts of censure, was not restored to its prestige. His doctrine of centralization, however, exercised a decided influence on the minds of the people and was destined to have

a brilliant history. It was largely due to the influence of his works and the efforts of some of his followers that national consolidation was finally brought to pass.

It was recorded that there were 3,000 nations in the beginning of the Shang dynasty, 1,773 at the commencement of the Chau dynasty, 165 recorded in *The Spring and Autumn*, and 7 at the close of the "Period of the Warring States." After about five hundred years of war and feudal anarchy, the people prayed for peace and determined to have it at any cost. Their prayer was at last heard and unto them was sent a man, who has been compared with Napoleon Bonaparte in resolution and unscrupulousness. By hook or by crook he absorbed all the other states, and after having accomplished this object he proclaimed himself the First Emperor.¹

B. Absolutism.

To enforce and maintain peace the First Emperor resorted to a crushing absolutism; and to secure this absolutism, on the advice of his minister, Li Shih,² a strong up-

¹ The First Emperor of the Chin dynasty (246-210 B. C.). He ascended the throne not as the Emperor but as the King of the State of Chin in the year 246 B. C. at the age of 13. His early years were employed in warfare, and he successfully reduced one after another the other states to submission by conquering:

The State of Han (in modern Shensi) in 230 B. C.

The State of Chau (in modern Chili) in 228 B. C.

The State of Wei (in modern Honan) in 225 B. C.

The State of Chu (in modern Hupeh) in 223 B. C.

The State of Yen (in modern Chili) in 222 B. C.

The State of Chi (in modern Shantung) in 221 B. C.

In the year 221 B. C. he found himself the master of all China. In this year he styled himself the First Emperor, and ordered the first successor to be styled the Second Emperor and the second successor the Third Emperor, and so on *ad infinitum*.

² Li Shih (died 208 B. C.) was a native of the Shantsai district in Honan and a student of political science under Hsin-tse. After having

holder of the central-power doctrine of Confucius, he took far-reaching measures.

In the year 221 B. C., the 26th year of his reign, the First Emperor (King of Chin before this time) referred to all his ministers the question for discussion whether it was advisable to make Imperial princes vassals. All the ministers replied in the affirmative except the judicial minister (and afterwards prime minister), Li Shih, who addressed the Emperor, saying:

Wen and Wu of the Chau dynasty created numerous vassals out of the members of their family. But the successors, having become more and more estranged in course of time, attacked one another as enemies; they sent out punitive expeditions and invaded the territories of one another as feudal princes, and were not to be controlled by the king. Solely depending upon the extraordinary energy and exertion of Your Imperial Majesty, all the feudal states were brought under one rule and became mere administrative districts. It is quite sufficient, in order to check undesirable impulses, that the Imperial princes and the generals be rewarded out of the public revenue. This is the way to secure peace, and it is inpolitic to create vassals.

The first Emperor remarked:

served for some time in his native state he left for the state of Chin. where he entered public service under Lui Pu-wei, then at the head of public affairs in Chin. He soon attracted the attention of the First Emperor, the then King of Chin, and was appointed the senior historiographer. Later on, as a reward for his valuable service on political questions, he was made a high minister. For many years he seemed to enjoy the confidence of the ruler, and in 214 B. C. he was raised to the position of the prime minister. Now he was all-powerful and his children intermarried with the members of the Imperial family. In 213 B. C. he suggested that history should begin again with the ruling dynasty and that all existing literature should be destroyed. After the death of the First Emperor he was accused of treason and thrown into a prison. A confession was wrung from him by torture, and in 208 he was executed at a market place.

It was because of the existence of the feudal princes and kings that the people suffered the consequences of incessant warfare. Depending upon the Spirits of our Ancestors, the country was once more reduced to peace. To create feudal princes would be to set up opposing armies, and it would be very difficult to maintain order. The opinion of the judicial minister is right.¹

The First Emperor obliterated the boundary lines of the feudal states and wiped out the vestiges of feudalism. Over the territory thus cleared thirty-six administrative prefectures were established and each of the prefectures was subdivided into districts. To each prefecture were appointed three officers—a prefect, a lieutenant-general, and a censor.

This momentous transition was not only dynastic but also revolutionary. Out of the wreckage of feudalism emerged absolutism, bent on enforcing peace with an iron hand, crushing every attempt at individual initiative and enterprise with relentless determination, and reducing the people to cringing subjects. To symbolize this political change, water was made the dynastic character; black, the dynastic color; six, the numeric unit; and the tenth month of the preceding régime, the first month of the new calendar year. Weapons were collected and melted to form huge bells and statues; a uniform code of law was drawn up and promulgated; commands were issued to the effect that in every case the law should be applied rigidly, *i. e.* without giving consideration to extenuating circumstances or the benefit of doubt; men of promising talents and ability were forced to remove to the capital and were well watched over; and the name “black heads” was ordered to be applied to the people.

¹ From Sze Ma-chien's “History of the Reign of the First Emperor of the Chin Dynasty.”

To the objection urged by some ministers that such laws could find no precedents in any of the preceding régimes and were totally unknown in the halcyon days of yore, Li Shih replied that small-minded scholars alone stuck to the old, and that to cut the present asunder from the past and to accept those measures only which were adapted to the existing conditions, was the very object of the government. In accordance with his firm conviction, he resorted to extreme measures. Although many a time he was opposed by his colleagues, yet he always comforted himself by thinking that he invariably found sympathy in the First Emperor. One day he told the monarch that what was the most dangerous to the dignity and integrity of the government was the existence of men, who, habitually fond of the past and despising the present, criticised the existing authorities in order to mislead the "black heads," commented on every newly-issued edict and ordinance according to their several predispositions and preoccupations, quoted ancient authorities in order to show their learning, took exception to whatever was said by other men so that people might admire their independence, and, whenever disappointed or thinking themselves to have been unfairly treated, slandered the government and induced others to follow their example. If these men were not suppressed the necessary consequence would be that imperial authority would fall to the ground and parties would spring into existence.

Hence laws were made to the effect that the "black heads" should not busy themselves about anything outside of their home affairs, the farmers and laborers should devote their attention and time to their respective occupations, and only candidates for governmental service were allowed to study law and politics on condition that they learned them under government officers.

In attempting to prevent the rising generation from ac-

quiring any knowledge of the past and thus from developing a fond attachment for old institutions, the government issued the dreadful order that all the books should be burnt except (1) the history of the Chin dynasty, (2) the books in the Imperial Library, and (3) the books on medicine, pharmacy, prognostication, divination, and horticulture. Every man was compelled to take the books he possessed to the lieutenant-general of his prefecture to be burnt within thirty days after the publication of the order on penalty of having his face painted black and being sent to the north to work on the construction of the Great Wall. To stop the last loophole, it was further ordered that any man, who talked persistently about ancient books or praised the former government to the disparagement of the existing, should, in the former case, suffer capital punishment at a public place, and, in the latter, be subject to due penalties. Even members of his family were punished on account of his acts. Furthermore, any officer, proved to have connived at such criminal acts, was dealt with in the same way.

C. New Form of Taxation.

In the chapter on Feudalism it was mentioned that different kinds of land, graded according to their distances and degrees of fertility, were granted to different farmers according to the numbers of their family members. Before touching the new method of taxation it will not be out of place to say a word about the size of the estate a feudal farmer received from his lord and the amount he paid as rent.

In the early stage of the feudal system a farmer was granted 50 "acres" and required to contribute a tenth part of the annual produce to the government. Later on the land was divided up into equal squares of 630 "acres," and each of the squares was sub-divided into 9 squares of 70 "acres" each:

630 "acres"

70	70	70
70	70	70
70	70	70

The 8 surrounding squares were given to 8 farmers separately for their own profit on condition that they must jointly cultivate the central square, the produce of which went to the royal or princely granary. Still later the large square was extended to 900 "acres" and the small square was consequently of 100 "acres." Now 20 "acres" out of the central square were set aside for sheds for oxen and implements, and all of the 8 farmers cultivated the 880 "acres" by joint labor. After having appropriated the produce of 80 "acres" to the king or the prince the remainder was equally divided among themselves.

Hsian Kung of Chin, a predecessor of the First Emperor as the Prince of Chin, saw the obsolete character and wastefulness of the "Squares System," especially in his age of militarism. In 350 B. C. he accordingly abolished this method, and in its place set up the "Unlimited Cultivation System." By this new system the government would grant any number of "acres" to a farmer according to his wish and capacity and tax him in accordance with the number of "acres" granted. This prince, to maintain an efficient army, made soldiers of the farmers of his own state, and removed a number of the farmers from the conquered states into his own, thus securing strength and wealth at the same

time. Finding the reformed system in full consonance with the spirit of absolutism, the First Emperor kept it intact.

D. Public Works.

To elevate the absolute power to a sublime height and to strike awe into the minds of the people, many magnificent public buildings were undertaken.

To facilitate the traffic between two centres of population a straight road of 1,800 *li* was constructed over rivers and through mountains.

To protect the country from the northern marauders the Great Wall of 10,000 *li* was built.

The royal roads within the capital were of a very high workmanship. They radiated from the centre, were two hundred and fifty feet in width, covered with hard material, and flanked with trees at intervals of thirty feet. Every part of the capital was connected with the palace by these magnificent streets.

Not being contented with the old palaces, the First Emperor caused a new one to be built. In this work 350,000 men were employed. When completed the palace measured 2,500 feet east to west, 500 feet south to north, and was capable of holding 10,000 persons. It has been said that when the new palace rose high into the sky the western mountains had been shorn bare.

II. POPULAR UPHEAVAL (209-206 B. C.)

When the warring feudal states had been suppressed, peace and order restored, horses left free, and weapons were fashioned into scythes, plough shares, and pruning-hooks, the people delighted in the thought that Heaven had at last heard their prayer and granted their request. But to their great astonishment and horror, they found in the very next moment, grinding absolutism established over their heads. Sanctity of home was no more; officialism penetrated into

every nook and corner of privacy; husbands were torn from their wives and sons were snatched away from their mothers' arms to be marched either to the capital to build the palace or to the north to construct the Wall. The people were forbidden not only to keep weapons but also to possess books. They were not only punished for criticising the existing government but also for praising the past system. No sooner had the people finished their mutual congratulation on their escape from the terrors of feudal wars than they found to their great distress that they had only jumped from the frying pan to the fire.

But human nature cannot be trifled with long in this way. The First Emperor and the prime minister presumed too much upon the indulgence of the people. If they were not allowed to talk they could make signs. So when two men met on the street they either winked at each other or shook their heads and heaved a sigh. Both being similarly situated, the significance of such signs was well understood, and was all the more powerful because the recipient had to interpret it with his imagination and thus naturally exaggerated its importance. Under the apparent surface of silence, fiery orations inciting men to revolution were being thundered forth incessantly, and trumpets were being sounded loudly summoning men into line. The atmosphere was thick with sulphur, and it only needed a spark to set the whole country ablaze.

Directly after the death of the First Emperor (210 B. C.), and the accession of the Second Emperor to the throne, the spark came. In a certain district 900 men were raised and marched to the south to guard the frontier. But rain impeded their progress and they could not reach their destination at the appointed time. One of the captains addressed the men saying, "We cannot arrive at the frontier in time, and therefore according to the law we shall all be

put to death. Even if we were not, sixty or seventy of every hundred of the garrison soldiers, as you know, die every year. A man, if he must die, should die nobly. Is there really such a thing as heredity of noble blood?" All agreed to rebel and thereupon they turned back, attacked and captured the city whence they had set out. At the summoning call of the trumpet the people "responded like reverberations and rallied like clouds." Soon independent uprisings occurred everywhere, and the political structure so laboriously built up by the First Emperor and the prime minister was crumbling into pieces.

Indeed, this was a heroic age. The question, "Is there really such a thing as heredity of noble blood?" was significantly asked everywhere; peasants were lost in contemplation at the plough-tail; and men were seen pacing wistfully in lonely places. A gust of wild ambition seized every man, and the thought of carving-out and lording it over territories possessed all persons of an adventurous spirit. The scenes witnessed before the régime of absolutism were repeated with the modification that in the place of Dukes, Earls, and Counts at the head of their feudal army we find constables, peasants and unscrupulous adventurers leading swearing and raucous rabbles. Finally a country constable, Liu Pang¹ (247-195 B. C.), who was fortunate in drawing some men of real ability to his side, succeeded in completing the destruction of the vanishing régime on one hand and reducing the contending leaders to submission on the other, and at length ascended the throne.

¹Liu Pang (247-195 B. C.). He was a native of Pei in modern Kiangnan. He was a man of magnanimity and high ambition, and would not condescend to do any ordinary work. Once when he saw the First Emperor in the capital he said: "A man should be such!" His excellent appearance and winning manners so much impressed a man of position by name of Lu that the latter gave him his daughter for marriage.

The scene following his accession was more picturesque than that witnessed in Washington after the induction of Andrew Jackson into the office of President. There the politicians asked for offices. Here the generals were incessantly pestering to be made "kings." When the shares of the spoils were being doled out to them they noisily asked why, after risking their lives as they did amidst showers of arrows, they received less than the scholar-advisers who had been sitting in their tents and doing nothing. Some disappointed spoils-seekers sat on the sand and plotted against the Emperor.

Of Jackson's inauguration it is related:¹

On his return from the Capitol, from the legislative building, to the White House, the residence of the President, Jackson was preceded, accompanied, and followed by an enormous crowd, which hurried up from all sides. The crowd broke into the White House, filled all the rooms in a twinkling, pell-mell with the high dignitaries and the members of the corps diplomatique; in the great reception hall, men of the lower orders standing with their muddy boots on the damask-covered chairs were a sort of living image of the taking possession of power by the new master. When refreshments were handed round, the rumour of which had attracted the crowd, a tremendous scramble ensued, crockery, cups, and glasses were smashed to pieces, rough hands intercepted all the ices, so much so that nothing was left for ladies.

In China the new Emperor had to learn court ceremonies. His *bourgeois* character was revealed in its full length, when, he, one day after the banquet ceremonies had been performed, exclaimed: "Now I know how honorable it is to be the Emperor!"

¹ Ostrogorski, *Democracy and the Organization of Political Parties*, Vol. II, p. 47.

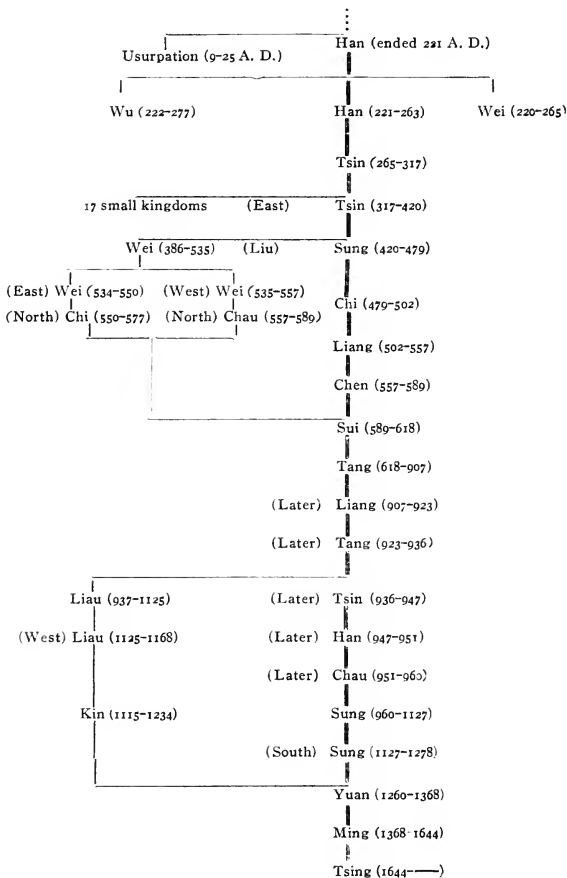
III. ABSOLUTISM (206 B. C.—)

From the day of this popular upheaval to very recent times there was no political development worthy of special notice. The régime borne in amid such popular enthusiasm soon changed into absolutism. The “kingdoms” of the generals were one after another dissolved, and several “kings” were put to death for crimes real or alleged. Thenceforward the country was sometimes broken into several states and sometimes controlled under one government, according as the Emperor was weak or strong. But in the time of consolidation as well as in that of disintegration there were found the elements of all the preceding régimes, prominence being given to one or another according to the requirements of the situation.

Of course there were many new and improved methods of administration, but mere administrative development cannot be considered here. Having reduced every part within the empire to submission, and fearing no nations beyond, for all the people surrounding the country were mere barbarians, the government directed its energy to devising ways and means by which peace and order could be preserved.

For centuries there were no important changes in the form of government—until the arrival of the “blue-eyed and red-haired” stranger from over the sea. It is to the contact with the West that the present movement for a written constitution and popular participation in the government may be traced.

In order to connect the dynasty which began in the great democratic upheaval as mentioned above with the present revival of political activities through the introduction of the western institutions and methods, a table of the dynasties since the Han dynasty is inserted:



CHAPTER V

MOVEMENT FOR A WRITTEN CONSTITUTION (1905-1910)

I. PRINCIPAL IMMEDIATE FACTORS CONTRIBUTING TOWARD THE CONSTITUTIONAL MOVEMENT

FOR more than twenty centuries the absolute form of government remained unchanged in its fundamental features. But during the latter half of the nineteenth century, contact with the West awakened the Chinese people to the necessity of remodeling their political institutions, and brought about acts of violence on the part of the enthusiastic reformers, the introduction of "new learning," and the sending of students abroad for education. In view of their importance let us dwell upon them one after another in a little more detail:

A. Revolutionary Acts.

The European or the American, who can hardly believe that a revolution in the form of government (especially from absolute to constitutional) may be effected without violence, must view with admiration the methodical procedure—the presenting of petitions by the people to the Throne for a constitutional government, the issuing of a decree by the Throne announcing compliance with the popular wish, and the further issuing of an Edict laying out a program for preparation—adopted by the Chinese in a matter of such a grave nature as a fundamental change in the governmental system.

It must be remembered, however, that this peaceful constitutional revolution was not without its violent prelimi-

naries. Acts of violence on the part of the people aiming at political reformation began after foreign encroachments and after it was discovered that the existing government was incapable of meeting unforeseen emergencies. The year 1898 witnessed the leases of Kiauchau, Port Arthur, Talienswan, Weihaiwei, and Kwangchauwan, and numerous valuable concessions of railway enterprises, and the people, seeing portions of their territory snatched away by foreign countries and finding the Government utterly unable to afford them protection, were roused to indignation and anger. The people of a more impulsive nature, impatient at the situation, gave vent to their feelings in attempting acts of violence against the Government as well as the foreigners.

In 1901 there were sporadic outbreaks in the Province of Anhui and other parts of the Yangtse Valley. In 1903 uprisings recurred in Kwangsi; and at Shanghai two editors of a Chinese newspaper were sentenced to imprisonment for seditious writings. On November 21, 1904, before the mixed court of Shanghai, proceedings were instituted against a certain schoolmaster for an alleged intention and attempt to assassinate Wang Chih-chun, formerly governor of Kwangsi and at that time the commissioner empowered to settle the question of the Canton-Hankau Railway. On September 24 of the same year, when the Imperial commissioners, specially sent to Europe, America and Japan to study and investigate the governmental systems of various countries, were leaving the Peking railway station, a bomb exploded in their private car, and one commissioner was seriously wounded, four minor officials were hurt, and the thrower of the bomb, who was inside the car, was blown to pieces. On May 31, 1907, an insurrection of 30,000 people broke out forty miles south of Amoy. On July 8 of the same year, En Ming, Governor of Anhui, was assassinated by a sub-director of police, when he was there

to distribute certificates on the closing day of the provincial police school. On September 21 of the same year a force of 2,000 insurgents stormed Yochau, and the Kwangsi inhabitants on the border joined the movement.

B. Introduction of "New Learning" through Translation.

The foreign works which have been translated into Chinese may be divided into three groups, namely: first, the works translated by missionaries; second, those done by the Chinese students who have studied European languages; and third, those done by the Chinese students who have studied the Japanese language.

In the reign of Shunchih (1644-1661), the first Emperor of the present dynasty, the Jesuit Schaal, on correcting a mistake in the Imperial Calendar and having otherwise shown the proficiency of his scientific knowledge, was appointed President of the Board of Astronomy. In the reign of Kangshi (1662-1723), the next Emperor, another Jesuit Verbiest, basked in the sunshine of Imperial favor, was made the successor of Schaal. Verbiest wrote an astronomical work entitled *The Perpetual Astronomy of Emperor Kangshi* and translated many books on the subjects of Astronomy and Mathematics.

However, it was not until after the wars with Great Britain, France, and Japan, when there was a keen desire for "new learning" and a growing demand for translated works, that missionaries sprang into literary activity. *The Society for Diffusion of Christian and General Knowledge among the Chinese*, the *Central China Religious Tract Society*, and other missionary agencies in 1904 offered over 1,100 kinds of non-Christian works for sale at Shanghai: 60, on Education; 90, on History; 40, on Geography; 110, on Political Economy and Government; 130, on Mathematics and Mechanics; 40, on Philosophy; 50, on Philology;

70, on Hygiene; 120, on Military Science; 100, on Literature, 30 on Fiction, *etc.*

Tseng Kwofan (1811-1872), in establishing arsenals and shipyards at Fuchau, Nanking, and Shanghai, attached to them a translation department, to which men learned in foreign languages were appointed to render western books on History, Government, and Science into Chinese. In 1889 the Peking School of Languages was founded for a similar purpose, and Marquis Tseng, son of Tseng Kwofan, was once the director. The works produced by these institutions are now regarded as antiquated and no more in general use.

At present among the best productions which have been valued by the Chinese scholars for the importance of the subjects, the authority of the original writers, and valuable notes and scholarship of the translator are the works of Mr. Yen Fu, once student in England, now occupying the position of the Director of the Peking Translation Bureau. Of the most important are the translations of Huxley's *Evolution and Ethics*, Adam Smith's *Wealth of Nations*, Herbert Spencer's *A Study of Sociology*, Jenk's *Introduction to Politics*, John Stuart Mill's *On Liberty*, John Stuart Mill's *A System of Logic*, and Montesquieu's *l'Esprit des Lois*.

The works done by the Chinese students studying in Japan are the most numerous. They mainly consist of small volumes, pamphlets and magazines on up-to-date topics, chiefly on Politics and Government, translated from contemporary authors, and written in a clear and simple style, thus exercising a powerful influence on the mass of the people.

C. Education and Travels Abroad.

Tseng Kwofan, in the year 1872, sent 120 young boys to America under the guardianship and directorship of Dr. Yung Wing, a graduate of Yale University, to be educated

on western lines. In 1873 another detachment was sent to England to study the navy by the Fuchau arsenal. But this excellent practice was not repeated until after the war with Japan, when not only the central government but also the authorities of the different provinces began to select young and competent students by open competitive examinations and send them abroad to pursue advanced courses offered by the colleges and universities. In 1906 a body of forty students were sent by Yuan Shihkai, Viceroy of Chili, to America under the superintendence of Dr. C. D. Tenney. Besides the Government students there is a large number of young men coming out for the purpose of education, either in compliance with their parents' wishes or of their own accord. Japan, on account of its geographical proximity, the similarity of its language with Chinese, and comparative low cost of living, attracted in 1906 and 1907 as many as 15,000 Chinese students. But it is to Europe and America that Chinese students in technical science are looking for instruction and enlightenment. At present there are about 900 students in the United States.

Besides a large body of students, princes and high officials have frequently traveled abroad since 1900, a fact which has been proved to be potent in paving the way for the adoption of a constitutional government. In 1901 Prince Chun, now Regent, left China for Germany to express regret for the death of Baron von Ketteler, and in the same year Na Tung, now a member of the Grand Council, was sent to Japan for the purpose of making honorable reparation for the death of Sugiyama. In 1904 Prince Pu Lun was sent to America to represent China at the St. Louis Exposition. In 1905 Prince Tsai Tse, Li Shengto, formerly minister at Tokio, and Shang Kihung, formerly Provincial Treasurer of Shantung, went to Japan; and Tuan Fang, Governor of Hupeh, and Tai Hungtsi, Vice-

President of the Board of Rites, went to America and Europe for the purpose of studying and investigating governmental systems of various countries. In this year both Prince Tsai Tao and Prince Tsai Hsun, brothers of the Regent, made a tour around the world, the former to study military systems and the latter to examine naval organizations.

II. POPULAR DEMANDS

The frequent outbreaks and acts of violence, the introduction of "new learning," and the trips of princes and high officials abroad had the effect, on the one hand, of placing the Government in a more favorable and receptive mood toward the representations and demands of the people and, on the other, of bringing the people to a realization of their own importance and their proper place in the State. The first manifestation of the growing self-consciousness of the people was in the form of protests, requests, and demands made to the Government.

A. Request asking Emperor Kwang Hsu to reconsider his "Abdication".

The phenomenal reform edicts of the September of 1898,¹ issued by Emperor Kwang Hsu, suddenly aroused formidable opposition from the conservative officials, and the late Empress Dowager at once took the reins of government into her own hands. In the morning of January 24, 1900, a solemn council of Grand Councillors, Grand Secretaries, and Presidents of the Boards was held. Subsequently an edict in the name of the Emperor was issued announcing his intention of abdication on account of ill-health and the nomination of a son of Prince Tuan to be the successor. The people were alarmed with this edict, and on the 26th

¹ To be referred to later on.

a petition signed by 1,230 representatives of gentry and merchants led by the Director of the Imperial Chinese Telegraph Office at Shanghai was forwarded to the Tsungli Yamen (the Foreign Office) at Peking by telegram, begging the Princes and Ministers of the Yamen to urge the Emperor to reconsider his abdication and revoke the edict, adding that untoward occurrences might happen if this action were insisted on. The Empress Dowager, on receiving the telegram, was struck with the unprecedented audacity of the petitioners. An order was issued to arrest the leader, the Director of the Imperial Chinese Telegraph Office at Shanghai, who, having been informed of the fact, fled to Macao. But what is significant is that "abdication" did not take place.

B. Demand for Cancellation of the Preliminary Agreement of the Canton-Hankau Railway Concession.

The Chinese Government had for a long time perceived and appreciated the importance and value of constructing a railway from Canton to Hankau. Unfavorable financial condition alone prevented them from carrying out their intention. Loans were offered by several countries, or rather syndicates of several countries, but Viceroy Chang Chih-tung (1835-1909), with his admiration for the United States, thought that in that country alone capital could be found without any danger from political and territorial designs. Accordingly, a preliminary agreement was made and signed at Washington between the Chinese Minister and an American syndicate on April 14, 1898, for a loan of \$20,000,000 to construct the line. The Belgians endeavored to obtain this concession, and the British, through the British Legation, worked for the same object, but both were unsuccessful. Viceroy Chang Chih-tung, solicitous to avoid any possible complication from any European nations in this enterprise, caused the following clause to be introduced into the supplemental preliminary agreement:

The object of this supplemental agreement is to make permissible the transference of benefits by the American Company to their successors or assigns, but the Americans cannot transfer the rights of these agreements to other nations or people of other nationalities. It is further agreed that without the express consent in writing of the Director-General and the American Company no other rival railway detrimental to the business of the same is to be permitted, and no parallel roads to the Canton-Hankau line are to be allowed to the injury of the latter's interest within the area served by the Canton-Hankau main line or branch lines.

Among the subscribers and holders of the 55 original shares were several prominent financiers and capitalists of the United States. Toward the close of the year 1899 the Belgians secured, by purchase in New York, a controlling number of the shares.

The knowledge of this state of affairs alarmed the patriotic Chinese, especially those of the Provinces of Kwangtung and Hunan, where the construction of the line would have direct effect. No sooner had this situation been known than the opinion of the leading Hunan people had been expressed that either the railway should be built as a *bona fide* American undertaking, in accordance with the stipulation quoted above, or the concession should be annulled, for they appreciated the fact that so long as the Government was not strong enough to resist foreign encroachment, an undefined control by an unscrupulous and avaricious nation must be a source of grave danger to the State. In 1904, more and more pressure was brought to bear upon the Government by the people of Kwangtung and Hunan for the cancellation of the preliminary agreement. In the Spring of 1905 a meeting of the representatives of the people of the two Provinces was held at Shanghai, as a result of which it was decided to urge the Government to insist either on

the cancelling of the agreement or on a specific assurance by the Government of the United States to guarantee the maintenance of American responsibility and control of the undertaking. Accordingly, the Chinese Minister at Washington was directed to press for an immediate settlement. On August 29 the President of the United States announced that China had cancelled the rights and concessions of the Canton-Hankau Railway and would pay as indemnity \$6,750,000 to the American-China Development Company.

C. Demand for the Cancellation of the Preliminary Agreement of the Suchau-Hangchau-Ningpo Railway Concession.

On September 14, 1898, by a preliminary agreement, the construction of three railway lines—the Shanghai-Nanking line, the Suchau-Hangchau-Ningpo line and the Canton-Kaulung line—was obtained from China by Great Britain. In the preliminary agreement as to the Suchau-Hangchau-Ningpo line, it was stipulated that the final agreement should be similar to that to be eventually determined by the same parties for the Shanghai-Nanking line. The final agreement for the latter was completed on July 9, 1903; but no action was taken as to the former. The people of Kiangsu and Chekiang, in which the line was to be built, alive to the dangers attendant upon such a concession, made strong representations to the Government for the cancellation of the preliminary agreement on the ground of self-annulment through lapse of time. An Imperial Decree on September 23, 1905, proclaimed the cancellation of the concession and transferred the construction of the line to the Provincial Bureau.¹

¹“In an interesting letter from Peking the special correspondent of the *Journal* draws detailed attention to the increase of Chinese nationalist feeling as manifested in official refusals during the last two years to grant any concessions for railways or mines in the Celestial Em-

D. Demand for Early Convocation of a National Assembly.

During the past few years the conviction of the people that the convocation of a national assembly, through which they can not only express their opinions but also make their opinions respected, is the only way to solve the problem of "saving the country" grew stronger and stronger, and they were not satisfied with the edicts holding forth the promise of granting a constitution but silent as to the exact

pire. It is not that there is the old-time hostility to civilizing methods, but the Chinese Government wants to construct its own railways and to rid itself of foreign interference, even up to the point of striving to annul previous concessions. Thus in spite of the agreement with Russia and in the face of M. Pokotiloff's protests, the Pekin-Kalgan line, which was to be laid down with the assistance of Russian funds, will be exclusively constructed with Chinese capital. A similar fate is said to have befallen a scheme arranged between the Viceroy of Hunan and Hupeh and the British consul at Hankau by which a loan of £8,000,000 at $4\frac{1}{2}$ per cent was to be applied to the construction of the Canton-Hankau Railway.

"As for mines the Chinese are now making a minute inventory of them. The Governors of the Provinces have received orders to protect all the mining districts in their regions and to prevent any concessions from being given to foreigners. There are heavy penalties for this crime of *lèse patrie* as it is called by the official documents. All Germany's efforts to secure a footing in Shantung have signally failed. Neither intimidation nor conciliation has availed. In order to obtain the concession of a railway line from Tientsin to Chinkiang on the Yangtse and to be authorized to construct branch lines from the trunk line of Shantung, Germany finally made an offer to the Dowager-Empress to withdraw the troops from Kiau-Chau and the neighborhood. Germany likewise took the imprudent initiative of proposing the total evacuation of Chili. The offer of evacuation was received with pleasure, and vague promises were formulated, but that was all. . . .

"Such ostracism, as is now being applied, will not be meted out, as he [the correspondent of the *Journal*] thinks, to such foreigners as really and honestly try to win the confidence of the Chinese. The epoch of State contracts with China is over, but private enterprise has a large field before it if it will deal directly with the Chinese themselves. . . ."—*London Times* of January 6, 1906.

date of fulfilling the promise. Early in the year 1908, mass-meetings were held in Kiangsu and Chekiang and representatives were sent to Peking to urge upon the Government a speedy convocation of a national assembly. In consequence of that earnest popular demand, on August 27 the Government issued an edict laying out a program of the nine-year preparation before the granting of the constitution.

III. PRELIMINARY STEPS TOWARD THE ESTABLISHMENT OF A CONSTITUTIONAL GOVERNMENT

A. Early Reforms.

The requests and demands for the cancellation of preliminary railway agreements led to demands for a constitutional government. But before proceeding to a study of the constitutional movement, it is desirable, perhaps, to make a review of the preceding reforms and attempts at reformation, so that we may be placed in a better position to see its gradual development.

1. *Naval and industrial reforms under Tseng Kwofan, Li Hung-chang and Chang Chihtung.* In 1865, through Tseng Kwofan, arsenals and shipyards were established at Fuchau, Nanking, and Shanghai. In 1876 a railway running between Shanghai and Wusung, covering a distance of twenty miles, was constructed. About the same time, through Li Hung-chang (1822-1901), telegraph service was inaugurated and the *Chinese Merchants' Steam Navigation Company* was established. In 1887, in order to facilitate the transportation of the output of the Kaiping coal mines, the second railway in China was constructed. Chang Chihtung, after he was appointed the Viceroy of the Hu-Kwang Provinces in 1889, caused huge factories and workshops to be erected on the banks of the Yangste River opposite Hankau. The mechanical equipment consisted of "two large blast furnaces of the Cleveland type, with all

their apparatus, appurtenances, and machinery, capable of producing about a hundred tons of pig-iron daily; a complete Bessemer plant, including two five-ton converters, with their cupolas, casting cranes, large blast engines, *etc.*; while a small 'Siemen's Martin' plant completes the steel works. . . . He also established a mill, which when in full working order, has no less than 20,000 spindles in operation."¹

2. *Attempts at reformation by Emperor Kwang Hsu in 1898.* The war with Japan and the subsequent acts of foreign aggression had among other things the effect of rousing Emperor Kwang Hsu and the enlightened portion of the people to the need of political reformation. Kang Yuwei, an accomplished scholar of the Kwangtung Province, was the leader of this reform movement. In January, 1898, he obtained the privilege of holding with the officials of the Tsungli Yamen a conference which lasted three hours; after which he was ordered by the Emperor to submit through the Yamen a memorial embodying what, according to his view, should be performed. The reformer accordingly recommended the imitation of the example set by Japan in revolutionizing the antiquated system of government, that is, the granting of free expression to the popular voice, the substitution of young and energetic men in the place of old officials, the readjustment of taxation on a scientific basis, and the establishment of twelve new administrative departments, namely, Judiciary, Finance, Education, Legislature, Agriculture, Commerce, Public Works, Railways, Post, Mining, Army and Navy. At the same time an official, Wang Chau, advocated the cutting off of the queue, the adoption of the European costume, the establishment of a national Parliament, the promotion of Christian-

¹ Douglas, *Europe and Far East*, pp. 286-287.

ity, and a trip by the Emperor and the Empress Dowager to Japan to see its political progress.

On September 14, 1898, an Imperial Edict was issued extending the operation of the new Post Service throughout the country and putting an end to the existing cumbrous system of government couriers. An Edict of the 15th, accorded all officials, high and low, gentry and scholars, the privilege of memorializing the Throne, and required monthly reports of the Government receipts and expenditures by responsible officers throughout the Empire.

But on the 21st occurred what has been called the *coup d' état*, by which the Empress Dowager virtually became the ruler. On the following day an Edict in the name of the Emperor was issued, proclaiming the restoration of the regency by the Empress Dowager. Kang Yuwei fled from Peking, eight of his associates were arrested, tried for alleged conspiracy against the Empress Dowager, and six of them were executed.

From the *coup d' état* of 1898 to her death, the late Empress Dowager was virtually the ruler of the Chinese Empire. The period extending from that year to 1905 was characterized as reactionary and anti-foreign, but as a matter of fact the aim of the Empress Dowager was to secure gradual reformation and effective execution of the Imperial commands in order to protect territorial integrity and to resist foreign encroachment. However, it was not until 1905 that political reformation began in earnest.

B. Inauguration and Progress of the Constitution Movement.

First Stage. In December, 1905, a Constitution Commission consisting of Duke Tsai Tse, Li Shengto, Shang Kihung, Tuan Fang, and Tai Hungtsi was sent to different countries for study and investigation—the first three to

Japan and the last two to America and Europe. On their return Duke Tsai Tse, representing the Commission, described the benefits and advantages accruing to countries with a constitutional government and urged the granting of a constitution and parliamentary representation at an early date. On August 27, 1906, an Imperial Committee consisting of the highest state officials in the Empire was appointed to examine and report upon the memorial submitted to the Throne through Duke Tsai Tse.

On September 1, 1906,¹ was issued an Imperial Edict ordering a reform of the official system, revision of the law, regulation of finance and revenue, reorganization of the army, and adoption of a constitutional government in the near future, with the reservation that supreme control would remain with the Throne. The Imperial Edict runs as follows:

We have received a Benign Command of the Empress Dowager to the effect:

Since the establishment of this Dynasty one illustrious Emperor succeeded another, and none of them has failed to alter or modify the governmental system so as to adapt it to the

¹ On November 6, 1906, was issued an important Imperial Edict reforming the Metropolitan official system, by which:

a. The Grand Council, the Grand Secretariat, the Board of Foreign Affairs, the Board of Education, and the Board of Civil Offices remained unchanged.

b. The Board of the Navy and the Board of Communications to control the services and systems of telegraph, steam navigation, railway, and post were created.

c. The Board of Works and the Board of Police were changed into the Board of Agriculture, Works, and Commerce, and the Board of Interior respectively.

d. The Board of Rites absorbed the various small Courts, and the Board of Revenue, the Board of Punishment and the Board of War merely changed their names.

e. For each Board there were to be one President, and two Vice-Presidents, instead of one Comptroller-General, two Presidents and four Vice-Presidents.

changed circumstances and to enact forthwith the alterations and modifications into laws.

Now all the countries in the world have been brought into communication and close touch, and hence the governmental system and laws of one country cannot be with convenience entirely independent of and different from those of another.

The governmental system and laws of our country have been transmitted from generation to generation with so little change and improvement that they are now out of harmony with the general existing conditions of the world, with the result that our country is in a dangerous position and we are filled with great anxiety and earnest apprehension. Without making extensive researches into the political systems and governmental methods of other countries so as to reform ours we shall not be able to carry out the plan laid down by our Ancestors on the one hand, and meet the expectation of the people for peace and order on the other. Therefore we sent our High Ministers to various countries to study and investigate their governmental systems and administrative methods. Now, these Ministers have returned, and in their report all submitted their opinion, as the result of their study and investigation, that the weakness and inefficiency of our country is due to the lack of close touch between the government and the people and the entire separation of those who are in office and those who are not. The officials do not know how to protect the people, and the people how to defend the country. That other countries are wealthy and strong is primarily due to the adoption of a constitution, by which all the people are united in one body and in constant communication, sane and sound opinions are extensively sought after and adopted, powers are well divided and well defined, and financial matters and legislation are discussed and decided upon by the people. Moreover, other countries look to one another for improvement, and amend their constitutions and change their laws to their highest efficiency. So it is not a mere accident that their governments are in such a good working order and their peoples enjoy so great happiness.

In view of the situation our country is in, there is no other way to power and prosperity than, after having carefully and minutely examined the constitutions of other countries, to adopt one by selecting portions of all, if necessary, best suited to us, whereby all civil affairs are open to the public but the controlling powers remain with the Throne, so that a permanent and proper foundation may be laid for our country. But at present no definite plan has been decided upon and the people are not educated enough for a constitution; if we adopt one hastily and regardless of the circumstances, it will be nothing more than a paper constitution. Then how can we stand before the people and ask them to repose confidence in us?

First of all, let us do away with all the long-continued corruptions and clearly define responsibilities. To effect these we must begin with the reform of the official system by deciding upon what new offices should be created and what old ones should be abolished, and then introduce the change gradually. Different codes of laws should be drawn up, national education co-extensive with our territory established, the financial system reformed, the army remodeled, and the modern police system adopted. All classes of the people should be taught to understand and to take an interest in politics, so as to prepare themselves to participate in the coming constitutional government.

Therefore we hereby command all the ministers and officials both within and without the metropolis to exert their utmost to carry out our purpose and realize it in definite results, so that after several years, when the plan shall have been fairly well drawn up, we, after having ascertained the general condition of the people and in accordance with the rules used in other countries at such a juncture and for such a purpose, will definitely decide upon the adoption of a constitution. The date when it will go into operation will be announced to the people in due time, the length of time intervening between the present and the date of such announcement being solely dependent upon the progress of the people in education.

We further command the Resident-Generals, Viceroys, and Governors to inform all classes of the people to this effect that: they make a special effort for education, know the principles of loyalty to the Emperor and patriotism to the country, understand the importance of union and progress, abstain from interfering with public welfare by a selfish purpose or defeating the accomplishment of a large object by a little discontent, respect order, and preserve peace—all these in order to acquire the qualifications of a subject under a constitutional government. This is our earnest hope.

Second stage. The Imperial Edict of September 20, 1907, commanded the establishment of a Government Council to be presided over by Prince Pu Lun and Grand Secretary Sun Chianai, as a preliminary step toward the introduction of a constitutional government. This Imperial Edict says:

We have received a Benign Command of the Empress Dowager to the effect: As the principle of a constitutional government requires that a political question be decided by public opinion, and as the Upper and Lower Houses of a Parliament are the source of political acts, it is extremely urgent that a Government Council be created to serve as the foundation of a Parliament inasmuch as the latter cannot be established at present. According'y we hereby appoint Pu Lun and Sun Chianai to be the Presidents of the said Council, who, in conjunction with the Grand Council, shall carefully draw up detailed regulations therefor for promulgation.

The Imperial Edict of October 19 of the same year created Provincial Assemblies, which were to discuss affairs concerning their several Provinces and were required to refer matters of importance to the Throne for approval, and to furnish information, whenever sought, to the Government Council through the Viceroy or the Governor. The words of this Imperial Edict were:

We have received a Benign Command of the Empress Dowager to the effect: We sometime ago issued an Edict establishing a Government Council in the Capital to serve as the foundation of the future Parliament. But at the same time there should be in all the Provinces political organs whereby to ascertain the public opinion, so that the people in those Provinces may have the opportunity of pointing out and stating the benefits and evils existing in their particular Provinces, planning local peace, and being trained for service in the Government Council. Accordingly we hereby command the Viceroys and Governors of all the Provinces to establish in their respective Provincial Capitals Provincial Assemblies, carefully to select upright and experienced officials and gentry to commence the work, and to order qualified people to elect worthy and able men to be the members of the said Assemblies, and vigilantly to guard against the entrance of persons of an insubordinate disposition, or of a disorderly conduct, or of selfish pursuit, or of wilfulness. As to what are to be established and what are to be abolished concerning local welfare the members of the said Assemblies shall have power to discuss, pass resolutions, and apply to their Viceroys or Governors for decision and execution; but as regards matters of importance, submission of the proposals to the Throne for approval is necessary before their execution. To the Government Council the members of the Provincial Assemblies may be elected by co-optation. Whenever there is a necessity of directing an inquiry to a particular Provincial Assembly by the Government Council, the latter may, on the one hand, send the communication to the Viceroy or the Governor concerned for transmission, and on the other communicate directly with the Provincial Assembly concerned for report. Conversely, whenever a Provincial Assembly submits questions to the said Council, it may, on the one hand, notify the Viceroy or the Governor of the fact, and on the other directly send the representation to the said Council for investigation and decision. As to local self-government in prefectures, departments and districts, preparation should be made with earnestness for the purpose of recruiting more men of ability for

public service and carrying into effect the principle that civil affairs should be left to the public, so that our hope and solicitude for peace and order may be realized.

In the Spring of the year 1908, the people, eager to see the adoption of a constitution and to hasten the date of its being put into operation, sent delegates to the capital for this purpose. The demand was presented in the form of a petition, couched in words at once mild and convincing, respectful and dignified, and at its back was the powerful and irresistible force of the people. As a result of this demand came, on August 27, the fourth important Imperial Edict announcing the nine-year preparation, setting forth the general principles of a constitutional government, the method of electing members of the future Parliament, and assigning the preliminary measures to be carried out during the nine years, as follows:

We have received a Benign Command of the Empress Dowager to the effect:

Princes and High Ministers Yi Kwang, Pu Lun, and the rest of the Constitution-Framing Commission and the Government Council have jointly presented a memorial containing proposed Principles of a Constitution and proposed Fundamental Laws of a Parliament and Election.

In view of the weakness of the nation and constant occurrence of unforeseen and undesirable events, unless there be union and harmony between the Throne and the subjects there is no hope of maintaining the national existence; unless there be enforcement of discipline there is no way of preserving peace and order; and unless there be mutual encouragement and mutual correction between the officials and the people there is no means of making progress and realizing substantial results. The principles of a Constitution and fundamental laws of a Parliament and Election proposed by the said Princes and High Ministers, clear and methodical in their classification

and well-defined in the division of powers, at once importing the excellences of the governmental systems of other countries and preserving in its entirety the civilization of China, are in strict accordance with the intent embodied in the Edicts repeatedly issued in recent times to the effect that supreme powers will remain with the Throne while civil affairs shall be open to the public opinion. When the day arrives for the framing of a constitution, these proposed principles and fundamental laws shall serve as the foundation, and the powers defined therein shall be strictly adhered to.

But before the opening of the Parliament and promulgation of the Constitution the existing system remains in full force, and the people shall patiently wait for the fulfilment of the grant after a systematic preparation.

As to the subjects of preparation to be carried out each year as arranged in the program, all of them are necessary functions of a constitutional government, and shall be gradually put into execution in good faith. It is hereby commanded to the said Princes and High Ministers that the program shall be appended to this Edict, printed, presented for affixing the Imperial Seal, and distributed to all Offices both in the Capital and in the Provinces, to be posted high in the Hall for the purpose of holding all officials, metropolitan or provincial, to the actual and orderly carrying out of the arranged program. At the end of every six months every official shall, on the one hand, memorialize the Throne with an orderly statement of facts concerning the works accomplished by or under him, and on the other present the same to the Constitution-Framing Commission for verification. Whenever there is a change of personnel in the office of President of the Boards or of the Courts in the Capital or in the office of Viceroy, Governor, Prefect or Magistrate, the predecessor (in conjunction with the successor) shall memorialize the Throne reporting the work accomplished during his occupancy, so that the merits and demerits of the incumbents may be severally determined and there may be no shirking and devolution of duties. As to those duties which the metropolitan and provincial officials are

required jointly to perform, the officials of the Boards, in the exercise of their power of inspection appertaining to their offices, shall from time to time report to the Throne of the progress which each of the provincial officials has made. In addition to that, the said Princes and High Ministers are hereby commanded to establish, with the Imperial approval, a special department for the verification of the work of the officials, and the censors are ordered to make inspections and inquiries thereinto. In case it be discovered that any official has delayed the performance of duty beyond the prescribed limits of time, or has performed it in bad faith, or only in name, he shall be denounced with a statement of facts, and then he shall be dealt with in the same way as if he had been guilty of negligence of duty. And if the said Princes, High Ministers and the rest should in any way commit collusion or suppress facts or shield offenders to the detriment of the general welfare of the nation, no mercy will be shown. At such a critical juncture the officials, metropolitan as well as provincial, being indebted to the nation, should be awake to the dangers and exert their utmost to eradicate any evil habits. If they still continue to be indifferent and unconcerned as to the harm of the country, can they be said to have conscience? As to the said Princes and High Ministers, their connection with the Government is more intimate, and their obligations correspondingly greater; how can they, without moral compunction, permit indulgence, connivance and shielding? The officials of the departments concerned in the Capital and the Viceroys and the Governors in the Provinces shall hold their subordinates to the carrying out of the plans of education and self-government among the people. The Parliament will be opened so soon as the program shall have been brought to a successful issue. In nine years, commencing from this year, the assigned work shall be completed. Then the Constitution shall be promulgated and the Parliament convoked.

It behooves all the people courageously to come forward and do their part toward the realization of grand peace and perfect happiness. If any undesirable characters, under the

cover of some phrases or availing themselves of some pretext, should mislead the people or create annoyance with the result of disturbing public order, we shall be compelled to treat them according to law and will never allow them to work harm to the country for the sole object that the nation may be strengthened and the best interests of the people promoted, so as to meet the wish of God and the Spirits of our Ancestors on the one hand, and fulfil the expectation of the people on the other.

Third stage. In obedience to the Imperial Edict of October 19, 1907, which created them, and to that of July 22, 1908, which sanctioned their regulations, twenty-two Provincial Assemblies were opened on October 14, 1909, by the Viceroys and the Governors respectively.¹ According to the first Imperial Edict twenty-three Provincial Assemblies were created, one in each of the twenty-three provinces, namely: Fengtien, Kihling, Hehlunkiang, Shentien and

¹ In Fengtien there were 52,679 votes cast electing 50 representatives (26 of whom being of official titles, 42 of literary degrees, 4 once students in Japan); in Hupeh, 113,233 votes electing 80 representatives; in Shantung, 119,549 votes electing 103 representatives.

In Shantung, Shansi, and Yunnan, lecturers had previously been sent round throughout the Provinces to instruct the electorates on the principles, methods, and precautions of election.

The Acting Governor of Shantung, in opening the Provincial Assembly, urged free expression of opinion but at the same time besought of the Assembly calm and dispassionate discussion. The subjects submitted were local self-government, education, police, trade, land taxation, etc. In the Provincial Assembly of Kiangsu the questions discussed and decided were, among others: the relation between the Viceroy and the President of the Provincial Assembly, prohibition of financing newspapers by officials, prohibition of lotteries, recommendation to the Provincial Assembly of Anhui the consideration of the Nanking-Wuhu Railway.

The monthly public expenses, besides traveling expenses, of the President of the Provincial Assembly is fixed at 150 taels (approximately \$95); that of the Vice-President, 120 taels (\$78); that of a resident members, 70 taels (\$45); and that of a member, 50 taels (\$32).

Chili, Kiangning,¹ Kiangsu, Anhui, Kiangsi, Chekiang, Fukien, Hupeh, Hunan, Shantung, Honan, Shansi, Shensi, Kansu, Sinkian, Szechuen, Kwantung, Kwangsi, Yunnan, and Kweichau. But in Sinkian (New Territory) it was found that the condition of the people was not yet ripe for such an assembly and therefore it was resolved that some temporary organization be adopted with a view to educating the people up to the necessary standard.²

Pursuant to the Imperial Edict of September 20, 1907, which created it, and to the Edicts of July 8, 1908 and August 23, 1909, which sanctioned its regulations, and to the Edict of May 9, 1910, which fixed the date of its inauguration, the Government Council was formally opened by the Regent on October 3, 1910. This Council (a national assembly in fact so far as its organization is concerned) was designed to be the foundation of the future Parliament. Though a single chamber, it contains the elements of two chambers: the representatives of certain privileged classes as the basis of the future Upper House and those from the Provincial Assemblies as that of the Lower House.

Fourth stage. As soon as the Imperial Edict of August 27, 1908, promising to grant a constitution in nine years was issued, disappointment and dissatisfaction were expressed through the progressive papers. Once more a delegation was sent to the Capital to demand of the Government

¹ Kiangning is not a province but a part of the province of Kiangsu.

² In Tihuafu, the capital of Sinkian, an Organization Office was established, in which meetings were held to discuss the organization of an assembly suitable to the condition of the people. It was resolved to suggest and recommend to the Government that for that particular place a system of representation akin to the methods adopted in a British Crown Colony be established, in which a limited Council should be created and composed of officials and gentry to be elected by persons possessing the franchise and approved by the provincial authorities, and that education be vigorously spread by founding schools.

an early convocation of a national assembly. The first petition was presented at the end of January, 1910, with no result. The second handed in on July 2, called forth the Imperial Rescript: "We have given unequivocal orders in this matter and desire not to be vexed with further prayers." But most of the Viceroy and Governors enthusiastically supported this movement, and the Government Council soon after its opening was found heartily in favor of this demand. A third petition by the delegation was sent in on October 27, and following this petition came the Imperial Edict of November 4, 1910, as follows:

We, upon receiving a telegraphic memorial submitted by the Viceroy and Governors requesting the promulgation of a Constitution, organization of a Cabinet, and opening of a Parliament, and upon further receiving a memorial from the Government Council stating the fact that the Provincial Assemblies and the popular delegations of the various Provinces prayed for an immediate convocation of a national assembly, at once handed these memorials over to the Princes and High Ministers of the Privy Council in Political Conference Session for review, which Princes and High Ministers immediately submitted a report thereon embodying their individual opinions, and which Princes and High Ministers, upon a special summons to an audience on the second day of this moon¹ discussed this question with earnestness on our inquiries. Thereupon we arrived at this general consensus of opinion:

Since the program of annual preparation and the date of adopting a constitution were fixed in the preceding reign, we, in consideration of the importance of the trust devolved upon us, steadfastly and faithfully adhered to our duty of carrying on the work in strict accordance with the regulations laid down by our predecessor, daring not to commit dilatoriness and remission on the one hand, and precipitancy and hastiness on the other.

¹ November 3, 1910.

Twice did the Censorate convey memorials from popular delegations for an immediate convocation of a national assembly, and to each memorial we gave explicit and unequivocal replies. At that time we, led by the consideration of the moment of this political change, held fast to deliberation and carefulness. Now, in view of the ever-changing conditions and the daily increasing danger, we have been filled with anxiety and have sought a way to safety. After a careful examination, we came to the conclusion that the way out of the difficulty lay in an early adoption of a Constitution—a conclusion we had arrived at before the request therefor made by the officials and people, the only consideration deterring us from carrying out our conclusion being the fear that, on account of the insufficiency of the educational qualifications of the people and the lack of financial strength, over-hastiness might defeat our purpose. We waited for a decision by public opinion and the ministers' discussion. Now, seeing the sincere prayer of the popular delegation and the desire for speedy progress on the part of almost half of the officials, metropolitan as well as provincial, and the growing interest and unanimous opinion of the people, we are warranted in holding that the people are ready to assume responsibilities under a constitutional government. Therefore we comply with their wish to give respect to public opinion. But before the opening of a Parliament preliminary measures are important and numerous, and cannot be accomplished in less than one or two years. So it is hereby commanded that a Parliament shall be opened in the fifth year ¹ of the Reign of Hsuan Tung; that the official system shall be reformed, published and tentatively applied at an earlier date as the preliminary step to the organization of a Cabinet; and that in accordance with the principles already sanctioned a Constitution, along with regulations governing the Parliament, the Election of the members of the Upper and Lower Houses, and other regulations pertaining to the Constitution, shall be drawn up and published before the opening of the Parliament.

¹ Corresponding to 1913.

As the settlement of a question implies a determination, the shortening of the preparation period was made by the Imperial decision after an examination of the memorials of the Viceroys and Governors and after an exhaustive discussion thereon by the Princes and High Ministers. So it is the result of the most careful consideration and the best possible compromise, neither to be postponed nor to be hastened: it shall be the fixed date and after publication can never be changed.

You High Ministers, metropolitan as well as provincial, should try your best to make progress and combine efforts to get over the difficulties. You Viceroys and Governors, ruling as you do the outer territories and being entrusted with important posts, should exert your utmost to carry out the local preparatory measures. There shall be no nominal performance or *mala fide* execution, but tangible results for every act and perceptible progress in each day. However difficult an assigned work may be, it is your duty to carry it to a successful issue. If there be any neglect so as to defeat our purpose, or any whitewashing so as to expect reward, the offenders shall be dealt with with no leniency. Every official is subject to examination as to the discharge of his functions, and every subject has the duty to observe social order. Henceforth if any ignorant people try to mislead others under the cover of certain phrases or attempt the destruction of social order, or exceed their proper spheres with the result of disturbing public peace, they shall be punished accordingly, so as to remove difficulties in the way of constitutional progress, in order to realize the expected results, and to comfort the Spirit of the last Emperor and to fulfil the expectation of the people within the Empire.

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